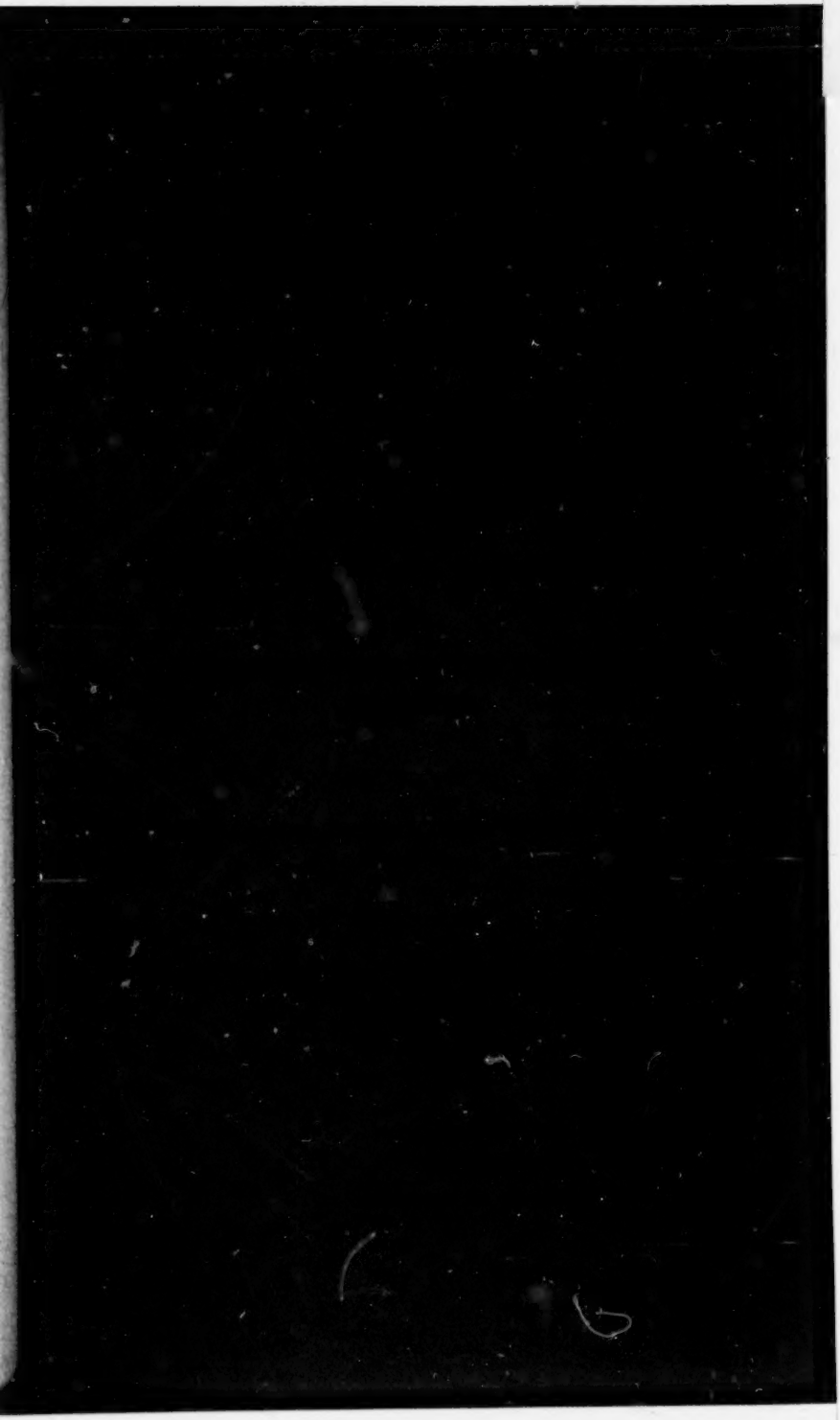

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 411.

MIGUEL TUPINO ET AL., PLAINTIFFS IN ERROR,

vs.

LA COMPANIA GENERAL DE TABACOS DE FILIPINAS.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

MOTION TO DISMISS.

Now comes the defendant in error, by its counsel, and respectfully moves this honorable court that the writ of error herein be dismissed for the want of jurisdiction.

A. B. BROWNE,
ALEXANDER BRITTON,
Attorneys for Defendant in Error.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 411.

MIGUEL TUPINO ET AL., *Plaintiffs in Error,*

vs.

LA COMPANIA GENERAL DE TABACOS DE FILIPINAS.

BRIEF IN SUPPORT OF MOTION TO DISMISS.

Statement.

This is an action brought by defendant in error to recover possession of some eighty-four separate parcels of land separately occupied by plaintiffs in error within the boundaries of the "Hacienda de San Luis y la Concepcion," Province of Isabela de Luzon. The amended complaint (par. 3, R., 7-8) after pleading capacity to sue, recites the general boundaries of the estate and as—

> " having a superficial area of 3,956 hectares, 25 areas
> " and 28 centiareas, which said estate is duly recorded
> " in the public register of this province and was pur-
> " chased by the said Compania General de Tabacos
> " for eighty thousand pesos from Antonio P. Casal,
> " through the latter's executors. The said Casal pur-
> " chased it from its original owners, who acquired it
> " by purchase from the State in 1882 in small par-
> " cels, which having been concentrated in the hands
> " of a single owner the Compania General de Tabacos

"now constitute the said hacienda known as the "'Hacienda de San Luis y la Concepcion.'"

The fourth and fifth paragraphs of the amended complaint aver (R., 8):

"Fourth. That the said Compania General de "Tabacos de Filipinas has, from the year 1883, the "time of the purchase of the land, to the present day, "been in quiet, peaceable and continuous possession "thereof, under claim of ownership, with the sole "exception mentioned in the following parapraph.

"Fifth. That the defendants above named, for "more than one and less than six years ago, illegally "seized and continued to hold certain portions of the "said property of the Compania General de Tabacos "de Filipinas, which said portions, together, have "a superficial area of four hundred and forty-six "hectareas, seventy-nine areas and four centiareas as "to the fields, and four hectareas, approximately, as "to the lots on which their houses and warehouses "are built, distributed among distinct and separate "parcels, but all within the perimeter of the said "estate above described, and for a better understand-"ing thereof, the following statement is given of the "parcels held by each one of the defendants."

Then follows the name of each separate defendant and statement of the area or lot respectively held in possession by each.

The amended complaint then concludes (R., 12-13):

"Eighth. He prays for judgment in favor of the "Compania General de Tabacos de Filipinas for the "possession of the said portions of the 'Hacienda de "'San Luis y la Concepcion,' which is exclusively its "property, and that the proper officers be directed to "restore the said company, through its agent, Miguel "Marcias y Toro, to the possession of the various par-"cels of the said estate above indicated, after the "eviction or expulsion therefrom of all the defend-"ants, including the houses and warehouses which "they have erected thereon, and that they be abso-

"lutely enjoined from thereafter disturbing the said "Compania General de Tabacos de Filipinas in its "possession, and to pay, furthermore, the sum of "nine thousand Mexican pesos to the said company "for damages, and to pay, also the costs of the suit."

The defendants answered separately. The answer of Miguel Tupino only appears in the transcript (R., 13-14), but the petition for writ of error to this court (R., 227) expressly states that "each of the defendants filed a separate "answer (all being in identically the same form). * * *

The answer of Tupino denied the boundaries and extent of the Hacienda as set forth in the complaint, and then averred:

"5. Denies that the said plaintiff company has a "title duly recorded in the property register of the "province of Isabela to the portions of the land described in paragraph 5 of the complaint, as possessed by the defendant.

"6. Denies that the portions of land described in "article 5 of the complaint as held by the defendant "form any part of the said 'Hacienda de San Luis y "'la Concepcion' or that they at any time formed part "thereof, or that they are situated within the boundaries thereof.

"7. Denies that the plaintiff company is the owner "of the portions of land described in paragraph 5 of "the complaint as possessed by the defendant, or "any part thereof, or that the plaintiff company at "any time occupied or possessed them, in whole or "in part, or that it has ever been entitled to the possession thereof, at any time or in any manner.

"8. Denies that the plaintiff company has any interest in the said portions of land described in paragraph 5 of the complaint as possessed by the defendant, or that the company has had any interest "in them at any time.

"9. Denies that the said portions of land described "in paragraph 5 of the complaint as possessed by the "defendant have been unlawfully withheld from the "plaintiff company by the defendant.

"10. Denies that the plaintiff company has suf-
"fered damages by reason of the detention of the
"said portions of land by the defendant in the sum
"of nine thousand pesos or in any other sum what-
"soever."

It will be noted that no *title* adverse to the plaintiff is asserted in any form.

Upon trial, decision and judgment was rendered for the plaintiff company against all the defendants with order for restoration of possession (R., 120-127), and on appeal this judgment was affirmed in the Supreme Court of the islands (R., 204). Opinions (R., 172-193); dissenting opinion (R., 193-197).

Writ of error has been here allowed upon *ex parte* affidavits that the separate parcels claimed by each defendant AGGREGATE in value over $25,000—the jurisdictional sum required (R., 209-211)—although affidavits of such aggregate value submitted by defendant in error (R., 206-208) show the contrary.

The separate and small holding of each defendant does not approximate $25,000 in value. The affidavit of Ramon Pertierra, submitted in support of this motion to dismiss and appended hereto, sets forth the separate holding of each defendant and its value. As the plaintiffs in error aggregate their separate holdings, in attempting to show jurisdictional value, it is hence plain that the separate holding of each cannot reach such amount.

ARGUMENT.

Petition for writ of error to this court was originally denied by a justice of the court below, the order stating (R., 223):

"Applying the doctrine laid down in the case of
"Edwin H. Warner *vs.* Seven Hundred and Seventy-
"one Opositores, decided by the Supreme Court of
"the Philippine Islands November 18, 1905, follow-

"ing Tupper *v.* Wise, 110 U. S., 398, the petition "should be and is hereby denied."

In the case first above cited (5 Phil., 330) the court said:

"Each one of the 771 appellants filed a separate "answer in the court below, in which he claimed "ownership of a certain tract of land. No one of "the appellants has or claims any interest in the "tracts of land claimed by the other appellants. "Under these circumstances no one of them has a "right to remove the case to the Supreme Court of "the United States unless the tract of land of which "he claims to be the owner exceeds in value $25,000 "in money of the United States. The fact that all of "the different tracts of land claimed by the different "appellants exceed in value that sum does not give "them the right to such removal (*Tupper v. Wise,* "110 U. S., 398)."

In *Tupper v. Wise, supra,* the opinion of the court is as follows:

"This was a suit brought by Wise, the defendant "in error, against the plaintiffs in error and others "to recover the possession of sec. 21, T. 3 N., R. 8 E., "Mount Diablo base and meridian, containing 640 "acres of land. Tupper answered, denying that he "was in possession of any part of the section except "the N. E. ¼, and to that he set up a pre-emption "claim and settlement. Lenfesty made the same an- "swer and claim as to the S. E. ¼. There was no "joint ownership or joint possession. Each defend- "ant claimed a separate and distinct interest in a "separate and distinct part of the land. The jury "found that the 'defendants were each severally in "'the wrongful possession of the lands respectively "'described in their several answers and no others, "'and that the value of the rents and profits of the "'lands so held and possessed by defendant Tupper "'is $100, of the land so held and possessed by de- "'fendant Lenfesty $100, and that the value of each "'one of said tracts of 160 acres is $3,000, and of the "'two of them $6,000.' Judgment was thereupon

"rendered against Tupper for the possession of his "tract and $100 damages, and against Lenfesty in "the same way. Tupper and Lenfesty then sued out "this writ of error, which Wise moves to dismiss, be- "cause the claims of the several plaintiffs in error "are separate and distinct, and the value of the mat- "ter in dispute with either of them does not exceed "$5,000.

"This motion is granted. The rule is well settled "that distinct judgments in favor of or against dis- "tinct parties, though in the same record, cannot be "joined to give this court jurisdiction. The whole "subject was fully considered at the last term in *ex* "*parte Baltimore & Ohio Railroad Company,* 106 "U. S., 5; *Farmers' Loan & Trust Company v.* "*Waterman, Id.,* 265; *Adams v. Crittenden, Id.,* 576; "*Schwed v. Smith, Id.,* 188. The stipulation as to "the value of the property which is found in the "record cannot alter the case, for it states that the "aggregate value of the two quarter sections exceeds "$5,100, and the verdict fixes the value of each quar- "ter at $3,000."

In the petition for the present writ of error to this court, which was subsequently allowed the *sole* authority cited is the later decision of this court in *Friend v. Wise,* 111 U. S., 797. We quote that opinion:

"These motions are denied. The value of the two "sections of land which are in dispute is conceded to "be more than $5,000. The complaint alleges a "joint entry and ouster, and the answer does not set "up separate claims to distinct parcels of the land "by the several defendants. The judgment for the "recovery of the possession is against all the defend- "ants jointly. In this respect the case is entirely "different from those of *Tupper v. Wise* and *Lynch* "*v. Bailey,* 110 U. S., 398. We have jurisdiction "therefore."

The facts of present record clearly show that these plaintiffs in error stand in the precise attitude of the defendants

in *Tupper v. Wise, supra,* and *Warner v. 771 Opositores, supra,* in respect of the pending writ.

1. Each filed answer claiming possession of a separate and certain tract as "described" in the complaint.

2. No one of them has or claims any interest in the tracts of land claimed by the others.

3. There is no claim of joint ownership or joint possession.

4. The prayer of present complaint is for judgment "for the possession of the said portions of the Hacienda de San Luis y la Concepcion," * * * and "that the proper "officers be directed to restore the said company, through its "agent, Miguel Marcias y Toro, to the possession *of the "various parcels of the said estate above indicated."* * * *

The case at bar is clearly distinguishable from *Friend v. Wise, supra.*

1. In that case the complaint alleged "a joint entry and ouster."

Here the complaint (R., 8) contains no such allegation, but the direct contrary; and this is confirmed also by the finding and judgment of the trial court (R., 125-126), *inter alia,* thus:

> "Fifth and last. Can the defendants rely upon the "statute of limitations as a defense to the action "brought by the plaintiff? By no means as to any "of them. The greater part of them have not been "in possession for ten years, and those who claim "that they have been in possession for more than "ten years but for less than thirty years, even if this "possession be true, have not been possessors in good "faith or with a just title. Nor has the possession "even been continuous."

This demonstrates that there was in fact no "joint entry and ouster."

2. In *Friend v. Wise* the opinion recites that the answer does not set up separate claim to "distinct parcels of land," but here the separate answer of each defendant does relate to the portions of the land "as possessed by the defendant" or "as held by the defendant" and "as described in paragraph 5 of the complaint" (R., 13-14).

3. In *Friend v. Wise* the statement is that "the judgment for the recovery of the possession is against all the defendants jointly." But the court plainly regards the elements (1) of a complaint alleging joint entry and ouster, (2) the failure of the answer to set up separate claims to distinct parcels, and (3) judgment against all the defendants jointly as concurrent conditions which made the case entirely different from that of *Tupper v. Wise,* wherein, as shown, the complaint, answer, and resulting judgment was in legal effect wholly separate as to each defendant. That is precisely the situation and legal effect in the present case. The judgment *operates* in exact accord with the allegations of separate holdings and the prayer of the complaint is for restoration "of the various parcels of the said estate above indicated." The answer of each defendant is directed "to the portions of the land *described*" in paragraph 5 of the complaint, as "possessed by the defendant."

Upon such pleading and admission it is submitted judgment describing each parcel by metes and bounds cannot be justly required to make this case a separate demand against each defendant for possession of the land as "described" in the complaint and admitted as so "described" in the separate answer of each defendant. Such description was hence sufficient for pleading, issue, trial, and judgment. That the plaintiff claimed ownership of all the several tracts, and that the defendants possessed or held separate

parcels each for himself and without suggestion or claim of common possession or claim, is obvious. In other words, the defendants separately claimed against a plaintiff asserting title against them all. Judgment for plaintiff was hence in legal effect separate as to each defendant and operated to the extent of his several possession. It is these many, but separate, distinct possessions of small areas which on principle and authority *supra* we submit cannot be *united* to create jurisdictional value here. The applicable rule is again clearly stated in *Russell v. Stansell,* 105 U. S., 303, and as well expressed in the syllabus thus:

> " Where the land within a particular district was
> " assessed for taxation, each owner being liable only
> " for the amount wherewith he was separately
> " charged, and the bill of complaint, filed by a num-
> " ber of them, praying for an injunction against the
> " collection of the assessment, was dismissed, and
> " they appealed here—*held,* that the several amounts
> " cannot be united to make up the sum necessary to
> " give this court jurisdiction."

So, here, the separate demand for recovery of possession under the complaint is clearly stated therein, in respect of the several parcels described. It is met by the separate answer of each defendant. They here seek to unite their several interests (and in no sense joint) to create the necessary jurisdictional value.

As value is the sole ground of possible jurisdiction, we submit it must fail and the writ of error accordingly dismissed.

Respectfully submitted,

ALDIS B. BROWNE,
ALEXANDER BRITTON,
Attorneys for Defendant in Error.

APPENDIX.

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA.

MIGUEL TUPIÑO ET AL., *Plaintiff in Error,*

vs.

LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, *Defendant in Error.*

AFFIDAVIT AS TO AMOUNT IN CONTROVERSY.

The following statement shows the quantity and value of the land comprised in the parcel claimed by each plaintiff in error in the above-entitled cause, together with the value of the improvements thereon and the value of the annual product of each of said parcels set opposite the name of the plaintiff in error to which it corresponds:

	Area.	Value of the land and improvements.	Value of annual product.	Total.
Dionisio Respicio.....	10 hect. 6 a.	1.150	300	P. 1.450
Juan Fernando.....	5 a.	100	.....	" 100
Doroteo Mabajja.....	2 " 4 "	300	60	" 360
Gabriel Cuntapay.....	45 "	100	15	" 115
Pascual Tagagin.....	4 " 54 "	550	120	" 670
Zacarias de la Cruz.....	3 " 55 "	500	100	" 600
Platon de la Cruz.....	4 "	60	.....	" 60
Augustin Dorone.....	7 " 25 "	650	130	" 780
Emeterio Respicio.....	3 " 14 "	300	60	" 360
Carlos Camilag.....	8 " 17 "	1.000	250	" 1.250
Fabian Careaga.....	30 " 5 "	2.000	500	" 2.500
Urbano Agcaoili.....	4 "	60	.....	" 60
Teófilo Aleriano.....	1 " 39 "	200	40	" 240
Vicente Santiago.....	2 "	150	30	" 180

	Area.	Value of the land and improvements.	Value of annual product.	Total.
Potenciana Lucas	6 hect. 4 a.	500	120	P. 620
Maximino Galabay	54 "	150	20	" 170
Regino Ramones	3 " 5 "	400	90	" 490
Honorio Crisologo	1 " 54 "	250	40	" 290
Moises Aguinaldo	3 " 5 "	400	90	" 490
Bartolomé Guitang	4 " 30 "	500	120	" 620
Eduardo Domingo	12 " 97 "	1.200	300	" 1.500
Gabino Domingo	4 " 53 "	450	120	" 570
Francisco Bautista	5 " 54 "	650	120	" 770
Nicolas Lucas	8 " 13 "	800	200	" 1.000
Mariano Narciso	18 " 5 "	1.300	300	" 1.600
Apolinario Lucas	7 " 73 "	800	200	" 1.000
Baldomero Gaspar	3 " 79 "	500	100	" 600
Leandro Gaspar	3 " 53 "	450	100	" 500
Leon Galabay	4 " 5 "	500	120	" 620
Sabas Cristobal	1 " 5 "	150	30	" 180
Crispulo Cristobal	6 " 4 "	500	120	" 620
Marcelo Cristobal	2 " 18 "	300	60	" 360
Felix Ricardo	49 "	100	15	" 115
Tiburcio Juguib	6 " 5 "	500	100	" 600
Felix Asio	54 "	100	15	" 115
Clemente Batara	7 " 5 "	800	120	" 920
Cesáreo Gerardo	1 " 85 "	300	60	" 360
Melesio Tubias	9 " 4 "	600	120	" 720
Luis Sagabaen	2 " 4 "	300	60	" 360
Juan Baliti	1 " 65 "	200	40	" 240
Silverio Vidal	1 " 85 "	300	50	" 350
Teófilo Subia	1 " 24 "	200	35	" 235
Ventura Robles	10 " 85 "	900	150	" 1.050
Victor Mendoza	13 " 3 "	1.000	250	" 1.250
Teodoro Vidal	8 " 63 "	600	120	" 720
Gelasio Valdes	9 " 68 "	700	120	" 820
Eulogio Carnate	3 "	400	90	" 490
Santiago Daguio	20 " 50 "	800	150	" 950
Ramon Barut	64 "	150	15	" 165
Santiago Mendoza	10 " 47 "	900	200	" 1.100
Julio Arce	11 " 52 "	300	60	" 360
Melecio Gallen	3 " 61 "	1.000	240	" 1.240
Clemente Baquiran	4 " 38 "	600	150	" 750
Urbano Lubo	5 " 34 "	500	100	" 600
Genaro Domingo	2 " 2 "	300	60	" 360
Damiano Cacal	9 " 61 "	700	150	" 850
Pedro Madariaga	3 " 43 "	400	90	" 490
Miguel Tupiño	6 " 81 "	700	120	" 820
Eulalio Eugenio	4 "	100	.....	" 100
Justo Eugenio	9 " 4 "	700	160	" 860
Agustin Lafuente	9 " 35 "	800	150	" 950
Juan Labuguen	16 " 79 "	1.000	300	" 1.300
Nicolas Agcanas	2 " 4 "	300	60	" 360

	Area.	Value of the land and improvements.	Value of annual product.	Total.
Próspero Basilio	16 hect. 4 a.	1.000	300	P. 1.300
Arcadio Tubias	15 " 4 "	1.000	300	" 1.300
Emiliano Bayaca	1 " 24 "	150	30	" 180
Ubaldo Tangilan	4 " 4 "	400	90	" 490
Eugenio Guzman	3 " 54 "	400	90	" 490
Eugenio Apostol	4 " 4 "	400	90	" 490
Francisco Ortega	79 "	150	25	" 175
Justo Allam	6 " 4 "	600	120	" 720
Vicente Calimag	1 " 4 "	200	30	" 230
Roman Ramos	8 " 4 "	700	160	" 860
Miguel Medina	6 " 4 "	600	120	" 820
Bazaro Almazan	4 " 4 "	400	90	" 490
Matias Valdes	4 " 55 "	450	100	" 550
Ubaldo Batara	79 "	150	25	" 175
Ventura Respicio	4 "	60	.....	" 60
Lorenzo Padilla	82 "	150	25	" 175
Alejandro Calimag	2 " 5 "	300	60	" 360
Esteban Corpus	1 " 80 "	350	50	" 400
Esteban Marcos	2 " 54 "	350	70	" 420
Hipólito Ramos	2 " 5 "	300	60	" 360
Luis Guzman	4 "	60	.....	" 60

In those cases in which no value is assigned for the product the land is non-productive.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila.

Before me, Geo. N. Hurd, a notary public in and for the city of Manila, Philippine Islands, on this day personally appeared Ramón Pertierra, who being first duly sworn on his oath deposes and says: That he has read the foregoing statement of the quantity and value of the different parcels of land claimed by the plaintiffs in error in the above-entitled cause, together with the improvements thereon and the value of the annual product of each parcel; that he is familiar with the facts related and the subject-matter thereof,

and that said statement is in all material respects true and correct.

RAMON PERTIERRA.

Sworn and subscribed to before me by said Ramon Pertierra this the 4th day of November, A. D. 1907.

[Seal Geo. N. Hurd, Notario Publico, Manila, Islas Filipinas.]

GEO. N. HURD,
Notary Public.

My commission expires December 31, 1908.

Office Supreme Court, U. S.
FILED.
MAR 7 1908
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 148.

MIGUEL TUPINO ET AL., PLAINTIFFS IN ERROR,

vs.

LA COMPANIA GENERAL DE TABACOS DE FILIPINAS.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF OF PLAINTIFFS IN ERROR IN OPPOSITION TO MOTION TO DISMISS.

JOHN C. GITTINGS,
WM. STEELE GREY,
Attorneys for Plaintiffs in Error.

JUSTIN M. CHAMBERLIN,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 411.

MIGUEL TUPINO ET AL., PLAINTIFFS IN ERROR,

vs.

LA COMPANIA GENERAL DE TABACOS DE FILIPINAS.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF OF PLAINTIFFS IN ERROR IN OPPOSITION TO MOTION TO DISMISS.

Preliminary Statement.

A writ of error was granted in this case upon the statement by the plaintiffs in error, in their petition, that this case fell directly within this court's ruling in Friend *vs.* Wise, 111 U. S., 797, where Mr. Chief Justice Waite, speaking for the court, said:

> "*These motions are denied.* The value of the two sections of land which are in dispute is conceded to be more than $5,000. *The complaint alleges a joint entry and ouster, and the answer does not set up separate claims to distinct parcels of the land by the several defendants. The judgment for the recovery*

of the possession is against all the defendants jointly. In this respect the case is entirely different from those of Tupper *vs.* Wise and Lynch *vs.* Bailey. We have jurisdiction, therefore."

The defendant in error has moved to dismiss the writ, and urges as a ground for so doing that the case does not come within the ruling in Friend *vs.* Wise, *supra,* but is on all fours with the case of Tupper *vs.* Wise, 110 U. S., 378.

In *Tupper vs. Wise, supra,* the opinion of the court was also delivered by Mr. Chief Justice Waite and is as follows:

"This was a suit brought by Wise, the defendant "in error, against the plaintiffs in error and others "to recover the possession of sec. 21, T. 3 N., R. 8 E., "Mount Diablo base and meridian, containing 640 "acres of land. *Tupper answered, denying that he "was in possession of any part of the section except "the N. E. ¼, and to that he set up a pre-emption "claim and settlement. Lenfesty made the same an-"swer and claim as to the S. E. ¼. There was no "joint ownership or joint possession. Each defend-"ant claimed a separate and distinct interest in a "separate and distinct part of the land.* The jury "found that the 'defendants were each severally in "'the wrongful possession of the lands respectively "'described in their several answers and no others, "'and that the value of the rents and profits of the "'lands so held and possessed by defendant Tupper "'is $100, of the land so held and possessed by de-"'fendant Lenfesty $100, and that the value of each "'one of said tracts of 160 acres is $3,000, and of the "'two of them $6,000.' *Judgment was thereupon "rendered against Tupper for the possession of his "tract and $100 damages, and against Lenfesty in "the same way.* Tupper and Lenfesty then sued out "this writ of error, which Wise moves to dismiss, be-"cause the claims of the several plaintiffs in error "are separate and distinct, and the value of the mat-"ter in dispute with either of them does not exceed "$5,000.

"This motion is granted. The rule is well settled

> " that *distinct judgments* in favor of or against *dis-*
> " *tinct parties,* though in the same record, cannot be
> " joined to give this court jurisdiction."

To ascertain whether we are right or wrong, it therefore becomes necessary to see what is the subject-matter of the suit.

This is in substance an action of ejectment, and in fact has been so determined by the Supreme Court of the Philippine Islands (see Mr. Justice Johnson's opinion, Record, p. 192, and Mr. Justice McDonough's dissenting opinion, Record, p. 193); consequently, to ascertain what is the subject-matter in dispute, it becomes necessary to look at the pleadings and judgment.

"THE COMPLAINTS ALLEGE A JOINT ENTRY AND OUSTER" AND PRAY FOR A JOINT JUDGMENT.

The parts of the original complaint material to this motion are as follows:

> "Third. That the defendants above named have for the last five years, approximately, been illegally holding various portions of the said estate, which together amount to some hundred hectareas, more or less, distributed among as many distinct and separate parcels, but all included within the perimeter of the said estate.
>
> "Fourth. That the plaintiff has suffered damages in the sum of nine thousand three hundred pesos, Mexican currency, by reason of the unlawful detention of the said portion of the estate by the defendants above named.
>
> "Fifth. That the attempts of the representatives of the company to induce the defendants to vacate the land they occupy without suit has been unsuccessful.
>
> "Sixth. Therefore the plaintiff prays for judgment in favor of the Compania General de Tabacos de Filipinas for the said portions of the estate in question, and that it be directed that the proper officer restore the said company, and in its representa-

tion, the undersigned, *to the possession of the said estate, after an eviction or expulsion from the same of all the defendants, and that judgment be also rendered against the latter in the sum of nine thousand three hundred Mexican pesos*, and that it be adjudged that the defendants pay the costs of the suit" (R., pp. 6 and 7).

The amended complaint, after reciting the company's incorporation and a description, with metes and bounds, of the property comprising the "Hacienda," then goes on to recite that from the year 1883 to the present date it has been in quiet and peaceful possession thereof, under a claim of ownership, with the sole exception mentioned in the following paragraph:

> "Fifth. That the defendant [defendants] above named, for more than one year and less than six years ago, illegally seized and continued to hold certain portions of the said property of the Compania General de Tabacos de Filipinas, **which said portions together have a superficial area of four hundred and forty-six hectareas, seventy-nine areas and four centiareas as to the fields, and four hectareas, approximately, as to the lots on which their houses and warehouses are built, distributed among distinct and separate parcels, but all within the perimeter of said estate above described,** and for a better understanding thereof the following statement is given of the parcels held by each one of the defendants:
>
> "Dionicio Respicio holds a lot of six areas, approximately, on which he has erected a house and warehouse, with two parcels of arable land, one of which has an area of nine hectareas and the other of one hectarea" (R., pp. 8 to 12).

Then follows a like statement as to each of the defendants, but nowhere in said paragraph, or in any other paragraph of the amended complaint, is there a description by metes and bounds of any particular portion of land claimed to be

held by any particular individual; nor does it appear in the amended complaint that any one of the defendants claim title in himself, individually, and against the other defendants to any particular portion of any of the land; nor is there any statement anywhere to the effect that they were not and did not claim to be tenants in common. The complaint then proceeds with the sixth paragraph, which is as follows:

> "Sixth. The plaintiff has been damaged in the sum of nine thousand Mexican pesos by reason of the unlawful detention above described.
>
> "Seventh. That the extrajudicial attempts on the part of the representative of the company to induce the defendants to vacate the lands in question have been unavailing; and
>
> "Eighth. He prays for judgment in favor of the Compania General de Tabacos de Filipinas for the possession of the said portions of the 'Hacienda de San Luis y la Concepcion,' which is exclusively its property, and that the proper officers be directed to restore the said company, through its agent, Miguel Macias y Toro *to the possession of the various parcels of the said estate above indicated, after the eviction or expulsion therefrom of all the defendants, including the houses and warehouses which they have erected thereon, and that they be absolutely enjoined from thereafter disturbing the said Compania General de Tabacos de Filipinas in its possession, and to pay, furthermore, the sum of nine thousand Mexican pesos to the said company for damages, and to pay, also, the costs of the suit*" (R., pp. 12-13).

That the complaints do not seek to recover from any individual defendant an individual judgment for a certain portion or part of this tract of land is perfectly manifest upon their face. That the suit is against all of the defendants jointly and in effect does allege a joint entry and ouster also seems to be perfectly plain.

As we have before stated, there is no description by metes and bounds of any particular portion of that part of the "Hacienda" alleged to be in the possession of the defendants

as being in the possession of any particular defendant; and there is no allegation that any particular defendant entered and ousted the plaintiff from possession to any part of the "Hacienda" upon a date different from that of any other defendant. The only allegation is—

> "That the defendants above named for more than 1 year and less than 6 years illegally seized and continued to hold certain portions of the said property."

Can we conclude from such an allegation that the defendants went into possession at different times and held certain portions of the "Hacienda" antagonistic to one another? We hardly think so. If this allegation above referred to is not enough, we submit the prayer to the complaint ought to be conclusive. For example, take the portion which asks for an injunction. It does not pray that the defendants, individually, be enjoined from interfering with any particular portion of the "Hacienda" of which the individual defendant might be in possession, but—

> "That *they* be absolutely enjoined from thereafter disturbing said Compania General de Tabacos de Filipinas in its possession."

Possession of what?

This question can be readily answered by analyzing the two complaints, or even the amended complaint. We find in the fifth paragraph of the amended complaint that the land from which plaintiff claims to have been ousted is a portion of the "Hacienda" containing over *four hundred and forty-six hectareas*. We submit, therefore, the only necessary inference that can be drawn from the complaints in this case is the intention to allege a joint entry and ouster.

The value of the property from which plaintiff claims to have been ousted and which is the subject-matter in dispute, namely, the *four hundred and forty-six hectareas*, the Supreme Court of the Philippine Islands, upon affidavits exhibited by both sides and after a full hearing, determined to

be more than $25,000, United States currency. (See affidavit of MacDougall, R., p. 212, and Mr. Justice Carson's opinion and order, R., p. 216.)

"THE ANSWER DOES NOT SET UP SEPARATE CLAIMS TO DISTINCT PARCELS OF LAND BY THE SEVERAL DEFENDANTS."

The several defendants filed, by and through the same counsel, separate answers, each and every one being in identically the same form, all of which was fully recognized by the court below; consequently only one was allowed to be printed. (See order of Supreme Court of the Philippine Islands, R., p. 166.)

When we examine the answer, it is readily seen that it is in form and substance nothing more nor less than a general denial of plaintiff's title to the land in question.

That portion of the answer that is material to this motion is as follows:

> "5. Denies that the said plaintiff company has a "title, duly recorded in the property register of the "province of Isabela, to the portions of the land de- "scribed in paragraph 5 of the complaint, as pos- "sessed by the defendant.
>
> "6. Denies that the portions of land described in "article 5 of the complaint as held by the defendant "form any part of the said 'Hacienda de San Luis y "'la Concepcion,' or that they at any time formed "part thereof, or that they are situated within the "boundaries thereof.
>
> "7. Denies that the plaintiff company is the owner "of the portions of land described in paragraph 5 of "the complaint as possessed by the defendant, or "any part thereof, or that the plaintiff company at "any time occupied or possessed them, in whole or "in part, or that it has ever been entitled to the pos- "session thereof, at any time or in any manner.
>
> "8. Denies that the plaintiff company has any in- "terest in the said portions of land described in para- "graph 5 of the complaint as possessed by the de-

"fendant, or that the company has had any interest "in them at any time.

"9. Denies that the said portions of land described "in paragraph 5 of the complaint as possessed by the "defendant have been unlawfully withheld from the "plaintiff company by the defendant" (R., pp. 13-14).

Here we have no individual claim of title by any individual defendant to any portion of the land in controversy, such as in the case of Tupper *vs.* Wise, *supra*. The defense of each and all of the defendants, as set up in said answer, is a denial of the title of the plaintiff company.

It is true there is no affirmative claim set up in the answers of a joint interest, or joint ownership, or joint possession, for the very apparent reason that there is no claim of any ownership or possession of any particular tract by any particular defendant in any particular answer. In other words, there is no claim of superior title made by the defendants to any particular portion of the land, such as in Tupper *vs.* Wise, *supra*, and in this respect the instant case is identical with the facts in the case of Friend *vs.* Wise.

There the court said:

> "The complaint alleges a joint entry and ouster and the answer does not set up separate claims of distinct parcels of the land by the several defendants."

Notwithstanding such is the state of the record in this case, the defendant in error, on page 9 of its brief, argues that the answer of each defendant does relate to portions of the land "as possessed by the defendant," or "as held by the defendant," or "as described in paragraph 5 of the complaint." This argument, we submit, is unwarranted from anything contained in the answer, for the reason that in every paragraph of the answer where any of the quoted phrases appear it will be seen it is not an assertion of fact that the particular defendant claims to "possess" or "hold" any land whatever, but is simply a denial of the title to or possession of the land,

or portion of the land *described in the complaint, as being in the possession of or held by said defendants.* In other words, said phrases in the answer *are used only as plaintiff's description of the land as set forth in its complaint.*

"THE JUDGMENT FOR THE RECOVERY OF THE POSSESSION IS AGAINST ALL THE DEFENDANTS JOINTLY."

The only other ground alleged by defendant that the instant case falls within Tupper *vs.* Wise, *supra,* is based upon what counsel term "the finding and judgment of the trial court," which is quoted on page 8 of its brief. But when we turn to the record to examine the judgment of the trial court we find that it is not contained upon pages 125 and 126, as quoted in defendants in error's brief, *but upon page 127,* and counsel have evidently confused the opinion of the court, or reasons for its judgment, with the judgment itself. The judgment of the trial court is as follows:

> "Consequently for the reasons stated I decide:
>
> "First. That the Compania General de Tabacos de Filipinas shall be restored by the sheriff, or by his deputies, to the possession of the Hacienda de San Luis y La Concepcion by giving possession thereof to D. Miguel Macias y Toro, or any other person lawfully representing the said company.
>
> "Second. That judgment go against the defendants, Estabab Marcus, Ebanaldo Batara, and Lazaro Almazan, by default.
>
> "Third. That both the present defendants, as well as those declared in default, *be required to immediately vacate the said hacienda, or be evicted therefrom, together with their houses and warehouses.*
>
> "Fourth. That the preliminary injunction issued on the 15th day of November last and modified on the 3rd instant be regarded as perpetual from this date and the injunction bond of $10,000 given is to be canceled after the proper legal formalities. The tobacco in the hands of the receiver will be delivered to the Compania General de Tabacos de Filipinas and

the bond given by the receiver canceled, after rendition by him of his accounts of receivership.

"Fifth, and last. That the defendants present and those in default pay the costs and damages in the sum of nine hundred Mexican pesos; and, finally, that the said defendants are enjoined absolutely from performing any act tending in the slightest degree to disturb the possession of the Compania General de Tabacos de Filipinas to the lands comprised within the Hacienda de San Luis y la Concepcion.

"So ordered" (R., p. 127).

After examination of this judgment, it is clearly manifest that the contention of plaintiffs in error, that this case falls directly within that of Friend *vs.* Wise, *supra*, is correct and the motion to dismiss should overruled.

Respectfully submitted.

JOHN C. GITTINGS,
WM. STEELE GREY,
Attorneys for Plaintiffs in Error.

JUSTIN M. CHAMBERLIN,
Of Counsel.

15

Supreme Court of the United States

OCTOBER TERM, 1908.

Office Supreme Court, U. S.
FILED.
FEB 25 1909
JAMES H. McKENNEY,
CLERK.

No. 148.

MIGUEL TUPIÑO ET AL., PLAINTIFFS IN ERROR,

vs.

LA COMPANIA GENERAL DE TABACOS DE FILIPINAS SOCIEDAD.

BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

JOHN C. GITTINGS,
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LA COMPANIA GENERAL DE TABACOS DE FILIPINAS SOCIEDAD.

BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

Statement of Case.

This is an action of ejectment originating in the Court of First Instance in the Province of Isabella, Island of Luzon, Philippine Islands, brought by the La Compania General de Tabacos de Filipinas Sociedad Anomina against eighty-four defendants, on the 11th of December, 1902, resulting in a judgment for the plaintiff corporation, from which an appeal was taken to the Supreme Court of the Philippine Islands, where the judgment of the trial court was affirmed by a divided court; Judges COOPER and MCDONOUGH dissenting.

Judgment was entered on April 29, 1905. Thereafter, on May 1, 1905, the defendants petitioned that court for

an appeal to the Supreme Court of the United States, and said court, after consideration of the petition, and affidavits filed in connection therewith on July 3, 1905, *found as a fact*, that the amount in controversy exceeded $25,000 United States currency, and granted the appeal, fixing the supersedes bond at $40,000 Philippine currency, which was duly approved on the 6th of December, 1905 (R., p. 216).

Subsequently, on the 14th of January, 1906, defendants being in doubt whether remedy was not by writ of error, petitioned the Supreme Court of the Philippine Islands for a writ of error, which petition was denied on the authority of Tupper *vs.* Wise, 110 U. S., 398 (R., p. 223). Defendants then presented a petition to Mr. Justice McKenna of this court for a writ of error to the Supreme Court of the Philippine Islands, which was duly allowed on the 16th of February, 1907. Thereupon the defendant in error filed a motion to dismiss for want of jurisdiction, but the hearing on same was deferred until the time of argument on the merits, and this case is now here upon a writ of error to the Supreme Court of the Philippine Islands.

Statement of Facts.

The Complaint.

The plaintiff company in its complaint, as amended, averred that it had obtained by purchase in the year 1883 a tract of land in the townships of Cauayan and Angadanan, in the Province of Isabella, of 3956 hectareas, 25 areas and 28 centiareas; that the tract was known as the

"'Hacienda de San Luis y la Concepcion,' bounded on the north by the Rio Grande de Cagayan and by the lands

of Victor Guzman * * * ; on the east by the Cornayan Estero and the public lands; on the south by the public lands and by the Rio Grande de Cagayan; on the northwest by the public lands and by part of the ranchos of Mabantad, Carabatan and Andarayan; on the west, for its whole length, by the Rio Grande de Cagayan."

Plaintiff claimed title to the "Haciendas" through the executor of one Antonio P. Casal, who derived his title to the entire tract from various persons, who in turn had acquired it in small parcels from the Spanish Government in the year 1882; that said estate was duly recorded in public register of the province; and "from the time of the purchase of the land to the present day it had been in quiet, peaceable and continuous possession thereof under claim of ownership with the sole exception mentioned in the following paragraph":

"Fifth. That the defendant (defendants) above named, for more than one year and less than six years ago, illegally seized and continued to hold certain portions of the said property of the Compania General de Tabacos de Filipinas, which said portions together have a superficial area of four hundred and forty-six hectareas, seventy-nine areas and four centiareas as to the fields, and four hectareas, approximately, as to the lots on which their houses and warehouses are built, distributed among distinct and separate parcels, but all within the perimeter of said estate above described, and for a better understanding thereof the following statement is given of the parcels held by each one of the defendants:

"Dionicio Respicio holds a lot of six areas, approximately, on which he has erected a house and warehouse, with two parcels of arable land, one of which has an area of nine hectareas and the other of one hectarea" (R., pp. 8 to 12).

Then follows a like description as to each of the defend-

ants, but nowhere in said paragraph, or in any other paragraph of the amended complaint, is there a description by metes and bounds of any particular portion of land held by any particular defendant; nor any description of the location of the whole of the four hundred and forty-six hectareas, etc.

The complaint prayed for the expulsion of the defendants and that it be put into possession and for 9000 pesos damages.

The several defendants answered separately, but all the answers were alike. (See order of S. C. P. Is. R., p. 166.)

The answers denied that plaintiff company had a title duly recorded; and denied that their lands formed any part of the said Haciendas, or are situated within the boundaries thereof; and denied that plaintiff company ever was in possession, or entitled to possession, of said lands (R., p. 13).

The Evidence.

The trial of the action was begun at Ilagan, December 11th, 1902. Miguel Macias y Toro, the Philippine representative of the plaintiff, was the first witness examined, who, on being asked how he could prove the company owned the lands described in the complaint, said, by the title deeds. Witness then produced what purported to be nine deeds, which were then introduced in evidence (R., p. 14), Exhibits 1 to 9, inclusive (R., pp. 25-63), under objection of the defendants (R., p. 17), Exhibit No. 1 (R., p. 25) is dated October 20th, 1882. It is, or purports to be, a grant from the Spanish Government to one Doroteo Faustino of a parcel of land in the Province of Isabella, consisting of 90 hectareas, 97 areas and 80 centiareas (approximately 225 acres) for the consideration of $200. Faustino conveyed this property for the sum of $201 on

December 5th, 1882, to Casal, whose executor conveyed it to the plaintiff company.

Exhibits Nos. 2, 3, 4. 5, 6 and 7 are likewise grants from the government, and differ only from Exhibit 1 in the names of the grantees, location and description of the land so granted.

In each of said grants there is contained the following condition:

"The title shall be entered in the Central Administration of Government Monopolies and subsequently presented to the Politico-Military Government of Isabella de Luzon *under pain of nullity if the contrary is done*, so that it may be entered in that government and possession may be given in the usual legal form" (R., p. 25).

Each of the exhibits from 1 to 7, inclusive, contains two deeds, one being from the government and the other from the government's grantee to Casal.

Objection was made to the introduction of Exhibits 1 to 7, inclusive:

1. "Because they had not been presented to the Politico-Military Government of Isabella de Luzon and possession was not given the grantees in the usual legal form" (R., p. 1).

2. "Because of the non-performance of the condition prescribed by the deed of the claim, to wit: the recordation thereof in the Central Administration of Government Monopolies."

3. "Because the note of inscription which appears in each one of the documents is not made in compliance with Article 224 of the Mortgage Law."

4. "Because the notes of these titles were not written in the month of April last, when they were presented before this same court" (R., p. 15).

In overruling these objections, the Court held:

"That he should, and would, admit all documents presented by the plaintiff, and such other documents as might thereafter be presented, because the case was open for the taking of testimony, and it was necessary to admit all kinds of evidence, more especially as the documents in question were apparently recorded in due form, and that the grounds of the objection would be taken into consideration in the final result" (R., p. 15).

To this ruling an exception was taken.

None of the seven parcels above referred to was recorded until September 17, 1898, when all of the parcels were registered in the Property Register of Isabella.

Exhibit No. 8 (R., p. 43) is an instrument executed at Manila on the 31st day of October, 1887, before a notary, by Jose Clavet, who appears as the executor of Antonio P. Casal. This instrument, besides conveying the seven parcels in question, purports to convey 53 other parcels in Isabella to the plaintiff company, which had been denounced (petitioned for) to the State by his (Casal's) agents. With these 60 parcels the company formed the Haciendas, San Luis and La Concepcion.

It is also recited in Exhibit 8 that

"The lands comprising both haciendas, measuring together two thousand nine hundred and two hectareas, sixty-one areas and seventy-eight centiareas, bounded on the north by the arable lands of Joaquin de Guzman; on the northwest by the public lands and by the ranchos Mabantad, Carabatan and Grande de Cagayan; on the south by the said river and by public lands; and on the east by the Cornayan Estero and by public lands.

"The situation, boundaries and superficial area of the haciendas in question, as well as the names of the persons who denounced to the State the sixty parcels of which the haciendas are composed, appear in the plan of the said

haciendas, of which plan a copy will be attached to the appendix of my protocol, and another will be attached to the copy of this instrument, so that it may be added to the title deeds of the haciendas, which, as above stated, are in the possession of the Compania" (R., p. 48).

No such plan was attached to the instrument.

The plaintiff endeavored to have these parcels recorded on March 9th, 1895, but their registration was refused by the Register of Isabella, because the title was defective with respect to the personality of the corporation, "being a defect which does not appear to be subject to correction, no preventative annotation can be made thereto" (R., p. 51).

Exhibit 9 is an amplification of Exhibit No. 8, and sets forth that the estate consists of three thousand nine hundred and fifty-six hectareas, twenty-five areas and twenty-eight centiareas, but does not change the boundaries in any way (R., p. 58). Exhibit No. 9 was executed 21 days after Exhibit No. 8.

Objection was also made to the introduction in evidence of Exhibits 8 and 9, because,

1. "The register does not show the essential requisites prescribed by law:

2. "Because they do not describe the boundaries of the haciendas clearly, since in the register itself it appears that the Haciendas of San Luis y la Concepcion are bounded on the north and northwest by the arable lands of Joaquin Guzman, by the ranchos of Mabantad, Carabatan and Andarayan, which are the lands occupied by and in the possession of the defendants" (R., pp. 15 and 16).

The Trial Court ruled:

"That the excepting party must abide by the former

ruling, that this was not a proper time to examine the legal weight and effect of the documents, but simply to determine whether they should be admitted or not; and finally, that he rule that they be admitted" (R., 16).

To this ruling an exception was taken.

In addition to the documents described, the witness then produced Exhibit 10, a map or plan (that does not appear in the record—as it was inadvertently left out by the clerk of the court below, but has been supplemented by stipulation). This map is not a survey by the government; in fact, it is admitted by this witness none was ever made by the government.

This map, although stated by the witness that it refers to Exhibit No. 8, upon examination does not only fail to in any way mention Exhibit 8, but it absolutely contradicts the description of the plan or map referred to in that instrument.

It is a plan showing three thousand nine hundred and fifty-six hectareas, twenty-five areas and twenty centiareas; while in the deed by which the same land was conveyed to the Tobacco Company it is stated that the superficial area of the lands amounts to only two thousand nine hundred and two hectareas, sixty-one areas and seventy-eight centiareas, or a difference of one thousand and fifty-four hectareas, sixty-five areas and fifty centiareas in favor of the company.

It does not appear when or by whom this map was prepared, or whether it was ever attached to the deed of Clavet to the plaintiff company (Exhibit 8), which deed was entered into October 31, 1887 (R., p. 16). This was a survey made by order of the plaintiff company (R., p. 18).

The plaintiff company then offered two documents that evidenced that on April 19th, 1901, the title deeds and

documents relating to the property in question were recorded in the Forestry Bureau, as appears by Exhibit 11 (R., p. 63), and Exhibit 12 (R., p. 64) shows that the plaintiff company paid taxes for the year 1902, but it does not appear on what specific lands the taxes were paid.

To give additional strength to the claim of the plaintiff, Exhibit No. 13 was introduced in evidence. This instrument was executed February 29, 1896, between Manuel Nieto, a representative of the company, and Justo Allam, Eugenio Guzman, Arcadio Tubera and Agustin Lafuente, defendants, and forty-three other persons, who, it recites, had farms on the hacienda, and who are not parties to this action, and purports to be a lease between them and the plaintiff company.

Objection was specifically made to the introduction of this contract, on the ground that it was not alleged, or pleaded, in the complaint, and, therefore, could not be admitted and used to prove a breach of the same in this action, which objection the Court overruled, and admitted the contract in evidence, to which ruling defendants excepted (R., p. 17).

The witness Nieto, referred to in Exhibit No. 13, was called by the plaintiff and testified as follows (R., p. 24):

"Q. Do you know what are the boundaries of this land transferred to the company and known as the Hacienda of San Luis y La Concepcion?

"A. I do not know the boundaries, but the company has documents which would answer the question.

"Q. Is the land referred to in the document No. 8, which you have just recognized, the same, and has it the same boundaries as that which you assisted in surveying?

"A. The document will answer your question.

"Q. Do you recognize document numbered 8, and are you informed of its contents?"

At this point the Court stated "that public documents speak for themselves, and that, therefore, they need no proof."

The attorney for the defendants stated to the Court that the purpose of his question was to determine whether the witness recognizes the document and knew its contents. The Judge replied:

"That the witness is called to testify concerning the contract No. 13, and that his examination should, therefore, be limited to that point. As to whether he does, or not, recognize the document No. 8, this is not a matter upon which he could be interrogated, because he did not present it, and if it is admitted that it speaks for itself, all questions would appear to be unnecessary. I, therefore, rule out the question and ask you for the sake of prompt administration of justice to have the goodness to form your questions less capriciously and make them more pertinent, because it does not appear to be just that a witness called to prove one particular fact should be tortured with questions which are enough to disconcert the most self-possessed of men."

To this ruling exception was duly taken (R., p. 25).

The plaintiff company then called a number of witnesses for the purpose of showing that none of the defendants in this action were occupants of the land in question, excepting the defendants Justo Allam, Arcadio Tubera, Eugenio Guzman and Agustin Lafuente at the time of the execution of Exhibit No. 13. Nearly all of these witnesses were employees of the company. The witness Nieto "knew that there were only those four persons, because I went over the whole hacienda, and if there had been any other tenants it is evident that they would have all signed the contract" (R., p. 23). The testimony of the witnesses Manuel Rodriguez (R., p. 147), Jose Poo (R., p. 144)

and Ignacio Flores (R., p. 69) (all employees of the company) was similar in substance to that given by the witness Nieto. The witness Enrique T. Andrade testified that he did not know how long the individuals who signed document No. 13 had lived at Minanga prior to the year 1896 (R., p. 153).

This completed the plaintiff's case.

The defendants offered evidence to show that their holdings were not within the boundaries of the haciendas known as San Luis and La Concepcion, but were carved out of the ranchos of Minanga and Mabantad, which ranchos had been owned for many years by Joaquin Guzman and Manuel Dalanidao, Minanga being owned by the former and Mabantad by the latter. The witness Dalanidao testified as follows (R., pp. 86, 87, 88):

"Q. How long have you been living at Mabantad?

"A. Since my childhood.

"Q. Do you know D. Joaquin Guzman?

"A. Yes.

"Q. Do you know, more or less, when Joaquin Guzman came to Minanga?

"A. About twenty-five years ago, more or less.

"Q. Can you describe Joaquin Guzman's land with respect to its extent and boundaries?

"A. It is very big; it was bounded on the north with the Cornayan, at the east by the forest, on the south by the forest, and on the west by the River Cagayan.

"Q. Could you make a map of Joaquin Guzman's land and your land for the purpose of pointing out the forest which you refer to as the boundary?

"A. Yes, sir.

(See map between pages 168-169 of Record.)

"Q. Is it true that your Lands adjoin Joaquin Guzman's on the forest which was the boundary?

"A. Yes, sir.

"Q. Do you know how many tenants, more or less, there were on Guzman's land?

"A. There are many according to my calculation, there were from 100 to 110.

"Q. Who gave the name of Minanga to this rancho?

"A. Don Joaquin Guzman.

"Q. Have you ever observed during the last twenty-five years that the Mabantad lands have been surveyed by a surveyor?

"A. No, sir; I did not see anything of the kind.

"Q. Have you ever heard of the existence of an hacienda called 'San Luis and La Concepçion'?

"A. No, sir.

"Q. Do you know if there was a wire fence running through the Mabantad Rancho?

"A. Yes, sir; since August of this year.

"Q. Does this wire fence go over your lands?

"A. Yes, sir; it runs through the middle of my land.

"Q. Do you know who ordered it to be put there?

"A. No, sir.

"Q. Are you satisfied to have this fence there?

"A. No, sir.

"Q. Do you know what was the purpose for which this fence was put up?

"A. No, sir; I do not.

"Q. Isn't it true that many of the people who went to Mabantad and cultivated land asked your permission to do so?

"A. Yes, sir.

"Q. Why did they ask your permission and not that of any other person?

"A. Because I am the head of the rancho, and because all the lands included therein belonged to me.

"Q. How many years is it since your father died?

"A. Twenty years, more or less.

"Q. Was your father the owner of the lands which now belong to you?

"A. Yes, sir.

* * * * *

"Q. Did you have any tenants on your land?

"A. I had a great many; but some of them went away leaving three tributes.

"Q. How many families, more or less, lived on your lands?

"A. One hundred families, or more.

"Q. Do you know if Joaquin Guzman had any tenants?

"A. Yes, sir.

* * * * *

"Q. Can you state how many years ago, more or less, Joaquin Guzman brought them (tenants) from Tuguegarao?

"A. I think it must be about twenty or thirty years."

This witness further said he had never heard of the seven persons who had secured the grants from the government, and who subsequently conveyed the same to Casal, and which grants are the subject matter of Exhibits 1 to 7, inclusive (R., p. 89).

The witness Bruno Dalanidao testified that he lived on the Mabantad Ranch for twenty-five years; he also testified that Joaquin Guzman was the abutting owner on the west with the father of the former witness, Manuel Dalanidao. He had never heard anything about the haciendas called San Luis and La Concepcion (R., p. 90). The witness Justo Allam testified (R., p. 78) that he had lived in Minanga for thirty years. He was first a tenant of Joaquin Guzman. He said Guzman's land was a large tract, and had many tenants on it. The witness Ignacio Malana testified that he had lived on the Minanga Ranch for thirty years and came there with Justo Allam (R., p. 79). The witness Theodoro Balusan testified that he had been in Minanga thirty years and had come there with Justo Allam. He worked for the latter as his tenant, and had been cultivating the same land since that time. His lands and those of Justo Allam were situated within the boundaries of Joaquin Guzman's lands (R., p. 80). Theodoro Vidal (R., p. 81), Dinonicio Respicio (R., p. 82),

Zacarias de la Cruz (R., p. 85), Engracia Maraggun (R., p. 72), Lucas Mendoza (R., p. 71), Fernanda Corciano (R., p. 74) and Nicolas Lacaste (R., p. 75) also testified to the long occupancy that they and their fellow defendants had in the land which is the subject of dispute. The defendants then offered in evidence Document A (R., p. 90), a possessory title in favor of Victor Guzman, and Document B (R., p. 98) and Document C (R., p. 100), transcripts of the entries of inscription of the hacienda in question in the Registry of Property.

On this evidence the Court of First Instance found that the plaintiff company was the owner and possessor of the Hacienda San Luis y la Concepcion, with the situation, superficial area and boundaries described in the complaint, with a duly recorded title in the Registry of the Province of Isabella; and that the defendants are wrongfully withholding possession of parcels within the perimeter.

To this verdict the defendants duly excepted (R., p. 3).

On December 24th, 1902, the following decision was rendered by the Trial Court:

"1st. That the La Compania General de Tabacos de Filipinas shall be restored by the sheriff or any of his deputies to the possession of the Hacienda San Luis y la Concepcion by giving possession thereof to D. Macias y Toro or any other person lawfully representing said company.

"2nd. That judgment go against the defendants Estebab Marcos, Ubaldo Batara and Lazaro Almazan by default.

"3rd. That both the present defendants, as well as those declared in default, be required to immediately vacate the said hacienda, or be evicted therefrom, together with their houses and warehouses.

"4th. That the preliminary injunction issued on the 15th of November last, and modified on the 3rd instant, be re-

garded as perpetual from this date, and the injunction bond of $10,000 given to be cancelled after the proper legal formalities. The tobacco in the hands of the receiver will be delivered to the Compania General, and the bond given by the receiver cancelled, after rendition by him of the accounts of his receivership.

"5th. That the defendants present, and those in default, pay the costs and damages in the sum of nine thousand Mexican pesos, and finally, that the said defendants are enjoined absolutely from performing any act hereafter tending in the slightest degree to disturb the possession by the Compania General of the lands comprised within the Hacienda of San Luis y la Concepcion" (R., p. 127).

Ten days thereafter, the defendants moved for a new trial. This motion was denied (R., pp. 132 and 135). Exceptions were duly taken to the order denying defendants' motion (R., p. 135) and thereafter the defendants appealed from said order to the Supreme Court of the Philippine Islands. The said order was affirmed by a divided court. Chief Justice ARELLANO and Justices TORRES, MAPA and JOHNSON voting for an affirmance, and Mr. Justice MCDONOUGH and Mr. Justice COOPER dissenting (R., pp. 172 to 197).

Assignments of Error.

1. The Court erred in holding the following condition found in each of the seven grants from the government (Plaintiffs' Exhibits 1 to 7, inclusive), viz.:

"I issue this title, so that by virtue thereof the (grantee) may be declared the lawful owner of the said land. The title shall be entered in the Central Administration of Government Monopolies and subsequently presented to the Politico-Military Government of Isabella de Luzon, under pain of nullity if the contrary is done, so that it may be entered in that government and possession may be given in the usual legal form," to be a condition precedent.

2. The Court erred in affirming the ruling of the Trial Court in refusing to sustain defendant's objection to admission in evidence of the seven original grants from the government (Plaintiff's exhibits 1 to 7, inclusive), on the grounds that said grants were null, for the following reasons, viz.: they were never presented to the Politico-Military Government of Isabella de Luzon; and that possession was not given to the grantees in the usual legal form, all of which was a condition precedent. (No survey of the land was made by the government; the grantees were not placed in possession in the usual legal form; and the grants were not presented to the Politico-Military Government of Isabella de Luzon for entry.)

3. The Court erred in holding that the plaintiff and his grantor (grantees from the government) were in possession of the land contained in the original grants, and have maintained actual or quasi possession of the land.

4. The Court erred in affirming the finding of the Trial Court that the plaintiff had shown sufficient title to maintain the action of ejectment against the defendants.

5. The Court erred in holding that the admission in evidence by the Trial Court (Plaintiff's Exhibits 8 and 9, inclusive) was correct.

6. The Court erred in affirming the Trial Court in its ruling that it would admit all documents which the plaintiff had to offer in evidence and all the documents the plaintiff might offer in the future, at the same time cautioning defendants' counsel to refrain from interrupting witnesses by interposing further objections.

7. The Court erred in affirming the ruling of the Trial Court in admitting Plaintiff's Exhibit 13.

8. The Court erred in affirming the ruling of the Trial Court in admitting plaintiffs' Exhibit No. 14.

9. The Court erred in affirming the Trial Court in not permitting the following question to be answered by the witness, Manuel Nieto, on cross-examination:

"Are you acquainted with document number 8 and are you familiar with its contents?"

10. The Court erred in affirming the Trial Court's denial of the defendants' motion for an order that the records of Cauayan and Angadanan be brought in court for inspection and examination.

11. The Court erred in affirming the Trial Court in rendering judgment against the defendants.

Argument.

FIRST AND SECOND ASSIGNMENTS OF ERROR.

It was claimed by the defendant in error that the superficial area of the Hacienda San Luis y la Concepcion was more than thirty-nine hundred hectareas, which had been made up of sixty separate grants from the government and lay within certain described boundaries.

To prove its ownership and duly registered title there were offered in evidence the seven grants, Exhibits 1 to 7, inclusive. As we have previously stated, each of these exhibits contained two deeds, one from the government to the grantee and the other from the grantee to Casal. All were alike in form and terms, differing only in name of the State grantee, the description and amount of land, and each contained in the grant from the government to the

grantee the following conditions, which we respectfully submit is a condition precedent:

"I issue this title so that by virtue thereof the (grantee) may be declared the lawful owner of said land. This title shall be entered in the Central Administration of Government Monopolies, and subsequently presented to the Politico-Military Government of Isabella de Luzon, under pain of nullity if the contrary is done, so that it may be entered in that government and possession may be given in the usual legal form" (R., p. 25).

Each grant is dated Manila, October 20, 1882, the several grantees having petitioned for the land some time previously. Each grant was entered in the Central Administration of Government Monopolies on the 26th of October, 1882. The second deed in each exhibit is the conveyance of grantee to Casal and is dated at Manila, December 5, 1882. At the foot of each of the second deeds appears the following:

"The parcel to which this instrument refers forms a part of the Hacienda San Luis y la Concepcion inscribed with a single boundary in Volume 1, Canayan 11 of the Archive (fol. 118), lot 75, and Volume 2. Provisional Angadanan 1, of Archive Volume 7, lot 182, both first entries.
"Ilagan, Sept. 17, 1898, Lic. Juan Garcia Roderigo."

Following which is a seal reading "Register of Property of Isabella." To the introduction of these exhibits objection was made by the defendants, because they were not inscribed in the register and because they were prima facie invalid. The objection was overruled and the instruments admitted (R., p. 15).

1st. THE INSTRUMENT WAS NOT DULY RECORDED.

The inscription on these deeds, Exhibits 1 to 7, in-

clusive, we respectfully submit, is not a certificate of its registration such as is prescribed by Article 244 of the Mortgage Law of the Philippine Islands, but apparently an unauthorized memorandum. This memorandum refers to the inscription of the entire hacienda as first entry of lot 75, and first entry of lot 182 of Angadanan. Exhibits 8 and 9 (R., pp. 43 to 63), which were introduced with Exhibits 1 to 7, show by their footnotes that their inscription is the one referred to in the memoranda on Exhibits 1 to 7, for their inscription is at the same folios of the same volumes named in the memoranda of 1 to 7, and as "first entries." Exhibits 8 and 9 were not executed until 1887. If their registration was the "first entry" for these fincas how could the documents executed in 1882 have been registered?

"The entries relating to each estate shall be numbered in their proper order and signed by the Register" (Art. 229, Mortgage Law).

It is obvious that if the footnote in the second deed in each of the seven exhibits was a sufficient certificate of registration, it ought only to apply to the conveyances from Faustino and the others to Casal, and must leave the grants from the State to Faustino and the other six without any proof of inscription whatsoever.

"If the entry or record of several estates or rights has been made, all of which are contained in one instrument, the memorandum made at the foot thereof shall state precisely and laconically what has been done, noting also at the margin of the description of the instrument of each estate or right, its number, folio, book and number of the record or letter of the entry, which has been made regarding the same, without collecting any fees for these statements" (Art. 273, Regulations).

From the foregoing it must be clear that there is no proof whatever of the registration of the grants from the government contained in Exhibits 1 to 7. Therefore, the allegation of the plaintiff of a duly recorded title must fail.

THE INSTRUMENTS ARE PRIMA FACIE INVALID.

It is admitted that the grants were never presented to the Politico-Military Government of Isabella for registration, and the Trial Court finds as a fact that the condition was never performed, but held that the State alone could take advantage of the non-performance. The Court below held the language used created a condition subsequent.

The questions may now be asked, "Did title ever vest in the grantees of the government? Was not the condition under which the grants were made a condition precedent?" If the condition was a condition precedent, plaintiffs must show performance of the condition, for registration and claim of title cannot create a right where no right had ever existed. Plaintiff has not shown title in its grantors, and, therefore, could show no title in itself.

"If it is a condition precedent, the failure to perform will prevent the estate from taking effect. But if it is a condition subsequent, the estate is defeated only at the election of the parties who can take advantage of the breach."

Tiedeman, Real Property, Sec. 277.

It will appear from the following that the distinction and effect between condition precedent and condition subsequent are similar in the Spanish law to the common law of England and the United States.

"Conditions precedent (condiciones suspensivas) prevent the realization of the right until their fulfilment;

while conditions subsequent (condiciones resolutorias), both those which annul (resultorias) and those which rescind (rescisorias), do not prevent the contract or legacy from taking full effect, with the proviso, however, that if the condition be fulfilled all things return to the state in which they were at first. Conditions precedent suspend and prevent the perfection and consummation of the act or of the contract until their fulfillment, and conditions subsequent at the moment of their fulfillment destroy contracts already perfected and consummated."

Galindo Commentaries on the Mortgage Law, 4th Edition, Vol. 1, page 625.

"It is a general principle that a party who sets up a title must furnish the evidence necessary to support it. If the validity of the deed depends on an act in pais, the party claiming under that deed is as much bound to prove the performance of the act as he would be bound to prove any matter of record on which its validity might depend."

Williams *vs.* Peyton's Heirs, 4 Wheat., 76.

Concerning the inscription by a registrar of conditions in a deed, Galindo, the Spanish authority, says:

"The contract executed subject to the condition precedent has been inscribed in the Register and in it appears the eventual right of the grantee, for example, to arise in case of the satisfaction of the condition. Consequently, when the condition is satisfied, it is sufficient merely to make note of it, in order that it may be shown that the grantee has acquired the ownership and the inscription thereupon takes full effect."

Galindo (*supra*), p. 632.

"Neither in the law nor in the regulations is the case foreseen which must frequently arise wherein the condition precedent is not realized. But, if one follows the spirit of Art. 16 of the law, and takes into account, moreover, that because of the condition precedent the right has not arisen and that the grantor has not for one moment ceased

to be the owner, the transfer of ownership not having taken place, although the owner's facilities as such have been restricted, it will be clear that here, also, a marginal note will suffice, for this will practically have the effect of cancelling the inscription, inasmuch as the noting of failure to realize the condition is equivalent to the statement that the obligation does not exist."

Galindo (*supra*), pp. 652-653.

A number of cases have been decided in the Supreme Court of the United States, involving the title to grants upon condition of public lands formerly held by Spain and by Mexico in territory subsequently ceded to the United States, and the non-performance of the conditions. These cases involve the interpretation of the civil law by United States courts, and are in many other respects analogous with the case at bar, that it will be profitable to refer to them.

In United States *vs.* Kingsley, 12 Pet., 215, the facts were these: In 1816 Governor Coppinger of the then Spanish Province of East Florida granted to Kingsley a mill site and a privilege of cutting pine, "under the precise condition, however, that until he builds such mill this grant will be considered null and void." In 1829, after the cession of East Florida to the United States, Kingsley petitioned the District Court that this title to the tract granted by Governor Coppinger might be confirmed to him. The evidence showed that no mill had ever been built, though petitioner gave some excuse for his non-performance.

The District Court gave a decree in favor of the petitioner, and from this decree the United States appealed to this Court. Mr. Justice WAYNE, in his decision, says:

"We view this claim under the decree of Governor Coppinger as a permission to enter upon the land designated

in the petition and decree, in which land the appellee did not and could not acquire property, or even inchoate title, such as is embraced in the 8th article of the treaty, or by the construction of it, until he had, in good faith, prepared to execute the condition which the appellee held out as the inducement to obtain a grant; or, in other words, we think the decree of the Governor contains a condition precedent, to be performed by the appellee before the grant could take effect. In this case the appellee never attempted to perform the condition; there is no proof of his having done so in good faith, by the expenditure of money or application of labor. * * * It is the opinion of this Court that the petitioner, having failed to fulfil the condition of the grant that the said grant or concession is null and void, and that the petitioner has no right or title to the land."

U. S. *vs.* Kingsley (*supra*) is cited and followed in U. S. *vs.* Mills, 12 Pet., 216; U. S. *vs.* Drumond, 13 Pet., 84; U. S. *vs.* Burgevin, 13 Pet., 86, cases similar in fact. Cited and applied in U. S. *vs.* Wiggins, 14 Pet., 350, where grantee not having complied with condition as to improvements, grant was held void; Winter *vs.* U. S., Fed. Cas. 16895, where condition in grant as to locating land by authorized survey was not performed, therefore petition for confirmation of grant was denied; Doe *vs.* Latimer, 2 Fla., 80, where Spanish concession was made on conditions of performance of certain regulations and no steps had been taken to comply therewith at time Florida was ceded to the United States, held, such concession is no evidence of title.

"A Spanish concession of land upon express condition of inhabitation and improvement is no valid foundation for a grant unless there has been a compliance with such conditions."

McMiken *vs.* U. S., 97 U. S., 218.

"A concession by a Spanish Governor which is not followed by the proceedings which his order required, nor a

severance of the land from the royal domain, is invalid and void."

LeCompte *vs.* U. S., 11 How., 127.
U. S. *vs.* King, 3 How., 787.

All the cases cited or quoted above were questions between the claimants and the United States, and in such cases it was the policy of this Court, as repeatedly expressed, to interpret most liberally in favor of grantee, not applying the strict rules of the common law, and accepting reasonable excuses for non-performance of conditions. Where the petitioner made claim to public lands and was able to show some equitable grounds, his title was confirmed to him. But quite a different rule has been applied when the controversy has arisen between two private individuals, one of whom tried under a so-called Spanish land grant to recover lands in the possession of the other; in such a case the Court has followed the general rule of ejectment: "The plaintiff must show valid legal title, not merely an equitable one, to authorize recovery. Where no such title is shown, defendant's possession is sufficient for his protection."

Morehouse *vs.* Phelps, 21 How., 294.
Singleton *vs.* Touchard, 1 Black, 342.

In More *vs.* Steinbach, 127 U. S., 270, it appears that defendants claimed under a Mexican grant to one Jimeno, which grant contains this provision: "He (the grantee) shall petition the proper judge to be put in judicial possession by him in virtue of this document, etc." Jimeno and his successors never performed this condition, and after the United States had acquired the territory by cession from Mexico, plaintiff's grantors obtained title to the tract which had been granted to Jimeno. It was held that the title obtained from Mexico to Jimeno was an imperfect

one on account of failure to perform the conditions; that the lands remained public lands, and that the United States had, therefore, given good title to plaintiff's grantor.

Doe *vs.* Latimer (*supra*).

Even where Mexican and Spanish grants were made upon conditions subsequent, it has been held that failure to perform the conditions within the time fixed, or within a reasonable time, works a forfeiture of the grant, and this without the necessity of reentry or express cancellation.

Buyck *vs. U. S.*, 15 Pet., 215.
McMiken *vs.* U. S. (*supra*).
LeCompte *vs.* U. S. (*supra*).
U. S. *vs.* Moore, 12 How., 209.
O'Hara *vs.* U. S., 15 Pet., 279.

Both Spanish and American authorities support the contention of appellants that if the condition contained in the grants was a condition precedent, plaintiff could show no title without proof of the performance of the condition. It only remains, therefore, to determine the nature of the condition by examining into the intention of the grantor, as shown by the instrument and the circumstances under which it was executed.

"Whether conditions are precedent or subsequent is to be determined by the intent of the parties. There are no technical words which determine this point."

Findlay *vs.* King, Pet., 346.
Ward *vs.* New England Screw Co., Fed. Cas., 17157.
Rogan *vs.* Walker, 1 Wis., 527.

"In accordance with the same theory, Art. 1031 of the first draft for the Civil Code defines a condition precedent as 'that which suspends the effect of the obligation until

the occurrence or non-occurrence of the event.' I sell Jose an estate, if he travels abroad this year. I sell Pedro an estate, provided he does not marry within a year. I give Juan an estate, if he shall be living upon my return from Russia. These are examples of conditions precedent; and, as easily understood, the obligation exists, but its effect is suspended until the journey is made, until the year expires, or until the grantor returns from Russia."

Galindo (*supra*), pages 621-2.

"Conditions precedent may be implied, and in the inscription the clauses containing them must be set out; for they produce the same effects as do express conditions."

Galindo (*supra*), page 625.

"The construction must depend upon the intention of the parties, as gathered from the instrument and the existing facts, since no technical words are necessary to determine the question."

Washburn, Real Property, Vol. 1, p. 446.
Tiedeman (*supra*), Sec. 273.

In the case at bar the language of the condition is this: "This instrument shall be presented to the Politico-Military Governor of the Province of Isabella in order that he may take note of the same in his office and confer possession in the ordinary legal form, under pain of nullity if this is not done."

"For the proper construction of an instrument, the circumstances under which it is made, including the situation of the subject of the instrument and the parties to it, may also be shown, so that the Judge may be placed in the condition of those whose language he is to interpret" (Code of Procedure, Sec. 189).

Certainly it would be a strained construction which would make a condition *subsequent* of a proceeding required in order that the grantee might be put in posses-

sion of his land. On the other hand, to make it a condition *precedent* that the grantee should go to the Province where his land is situated and there be put in possession under the supervision of the Governor, would protect the State to a great extent from the accumulation of desirable public lands in the hands of speculators, and the Spanish Government must have so intended.

The wisdom of complying with these requirements is pointed out clearly by Mr. Justice McDonough in his dissenting opinion on page 194 of the record:

"It cannot be reasonably said that these requirements were not of importance to the government, as well as to the grantee. In order that the Government of Isabella might know what land was granted in that Province it was necessary to have a record of it entered therein, and in order to prevent disputes and litigation regarding boundaries, such as has happened in this case, it was wise practice to have the grantee placed in possession in legal form."

It might also be urged with a great deal of force that upon examination of the description of the land granted in each of the seven grants, it will become apparent that the condition recited in the grant is a condition *precedent* for this reason, viz.: there are not more than two natural boundary lines named in the description of the land granted in any one grant, the other boundaries being those of one of the other grants made at the same time. It was, therefore, a physical impossibility for the grantee to locate his land by the description designated. For the grantee to properly locate his land it was essential that "possession may be given in the usual legal form."

To give possession in the usual legal form would seem to mean, as suggested by this Court in More *vs.* Steinbach, 127 U. S., 70.

"A formal transfer of the property to the grantee by officers of the government was necessary.

"The proceeding was termed a judicial delivery of possession. Until it was had the grant was an imperfect one. As preliminary to, or as part of, the official delivery, the boundaries of the land were to be established after summoning the neighboring proprietors as witnesses to the proceeding."

It is perfectly patent that no one of these grants could be located by any of the grantees, because there were no courses and distances named. To run according to the natural boundaries named and to acquire anything under the grant, the proper officer would have to lay off the land in the manner prescribed by the Spanish law.

In many decided cases in the United States the investiture of title has been discussed and considered. On this question of investiture Mr. Justice FIELD may be quoted with interest in the action of Pacheco et al., *vs.* The United States (68 U. S., 282), as follows:

"When the grant to Pacheco was issued there still remained another proceeding to be taken for the investiture of the title. Under the civil, as at the common law, a formal tradition or livery of seisin of the property was necessary. As preliminary to this proceeding the boundaries of the quantity granted had to be established when there was any uncertainty in the description of the premises. Measurements and segregation in such cases, therefore, *preceded* the final delivery of possession. By the Mexican law, various regulations were prescribed for the guidance, in these matters, of the magistrates of the vicinage. *The conditions annexed to the grant in the case at bar required the grantee to solicit juridical possession from the proper judge.* In compliance with the requirement, within four months after the issuance of the grant, he presented the instrument to the Judge of the district and requested him to designate a day for delivering the possession. The Judge designated a day and directed

that the adjoining proprietors be cited and that measurers and counters be appointed. On the day designated the proprietors appeared, and two measurers and two counters were appointed and sworn to the faithful discharge of their duties. A line provided for the measurement was produced and its precise length ascertained. The measurers then proceeded to measure off the land; the Judge and the proprietors accompanying them. The measurement being effected, the parties went to the center of the land, and there the Judge directed the grantee to enter into the possession, which he did, and gave evidence of the fact by pulling up grass and making demonstrations as owner of the land. Of various steps thus taken, * * * a complete record was kept by the Judge in a 'Book of Possessions' * * *. The ownership, extent and general location of the land were matters thus brought within the knowledge of the neighborhood and were, no doubt, afterwards the subjects of frequent reference among the adjoining proprietors."

Again, if it had been intended that title should vest at once and that the grantee should thereafter perform the condition, a time would have been fixed for such performance; the failure to fix a time for the performance of a condition subsequent would make the condition valueless and not only this, for it would be leaving the performance of the condition entirely at the will of the grantee, which, according to Art. 1115 of the Civil Code, would make the grant void. In order to derive a reasonable construction of the condition, we must read it as precedent.

Finally, if it had been the intention to make the condition subsequent, it is reasonable to suppose that the grant would have read, "under pain of forfeiture," or "under pain of rescission"; but the phrase used is "under pain of nullity," and as that which is null cannot be annulled, it is difficult to see how the grantor could have meant that

an action or proceeding must be instituted to forfeit the grant for breach of condition subsequent.

The language employed and the circumstances under which the grant was given indicate clearly that the condition in the State's grants, Exhibits 1 to 7, was a condition precedent. From this it follows that plaintiff's failure to prove the performance of the condition renders plaintiff's title, deeds and title absolutely invalid and worthless.

"There was no record made of the grant, as required by law; the public record thereof, and not the document delivered to the party, was the effective grant. There was no juridical possession. The title, therefore, did not become definitely vested. A grant cannot perfect or complete the title when anything remains to be done to perfect it."

Bouldin *vs.* Phelps, 30 Fed. Rep., 547-558.

In the case of Fremont *vs.* U. S., 17 How., 442, this Court called attention to the fact that such grants as in the instant case were almost always made upon condition of settlement, or some other improvement by which the interest of the colony, it was supposed, would be promoted.

In this connection the Court said:

"But until the survey was made *no interest, legal or equitable, passed in the land.* The original concession granted a naked authority or permission and nothing more. * * * The examination of the surveyor, the actual survey, the return of the plot, were *conditions precedent,* and he had no equity against the government and no just claim to a grant until they were performed."

THIRD ASSIGNMENT OF ERROR.

The Trial Court held that the plaintiff company never lost the possession of the land in litigation (R., p. 124),

and the Appellate Court found that it went into possession of the land and that it had maintained actual or quasi possession (R., p. 193). These conclusions are not justified from the facts in the record. When the witness Macias y Toro, the Philippine representative of the tobacco company, was asked how he proved the possession of the plaintiff from 1883 to the time of the trial in 1902, he replied that Exhibits 1 to 9 proved it (R., pp. 14, 15). The witness also said he proved possession that plaintiff had paid the taxes in the year 1902, and that the boundary lines were rectified in 1889, 1894 and 1901, and that the company had cut timber in different parts of the haciendas without any opposition from any one (R., p. 16). There are sixty parcels in the haciendas, but it does not appear *where* the plaintiff cut the timber. It must be remembered also that three thousand nine hundred hectareas are almost equal to nine thousand acres. It is submitted that not one of these acts constitutes possession.

"Payment of taxes, surveying and assertion of right do not alone constitute possession. They merely show claim of title. Such acts as going upon land from time to time and cutting logs thereon do not give possession."

Newell on Ejectment, Chap. 13, Sec. 8.

There is no proof that the plaintiff company had ever exercised acts of ownership over land within the described perimeter until August, 1902, when it put a wire fence around the lands in litigation, or twenty years after it acquired its alleged title (R., pp. 86, 87).

The record may be studied from cover to cover, and we guarantee there cannot be found any other evidence to support the finding of the Court.

FOURTH AND FIFTH ASSIGNMENTS OF ERROR.

Although only seven out of the sixty alleged grants it is stated Casal secured from the original grantees, which it is claimed comprise the "haciendas," were exhibited or offered in evidence, the defendant in error proceeded to introduce in evidence Exhibits 8 and 9, both purporting to convey all of the land mentioned in the sixty grants.

Upon these two instruments rest the entire strength of the defendant in error's title and case.

Certainly it cannot seriously be contended that these documents, Exhibits 8 and 9, could convey more than the total amount of land embraced in the seven grants (Exhibits 1 to 7), which is less than 800 hectareas; and as a necessary consequence they are equally subject to the same defects we previously pointed out. But there were other and further objections to these instruments, viz.: the register did not show that their registration complied with the requisites prescribed by law; and the boundaries were not properly described (R., pp. 15, 16). At the foot of Exhibit 8 appears the following:

"Inscription of the foregoing document refused on account of the defect of lack of personality of the corporation therein named, and this defect is incurable, no cautionary note will be entered." Ilagan, March 9, 1895, Juan Conde, Registro de la Propriedad Isabella (R., p. 51).

Immediately following this note is a certificate of pretended inscription of 1898:

"This document is inscribed in the first volume of the Municipality of Cauayan, Archive 11 of this Registry, folio 118, estate number 75, first inscription. And in the second provisional volume of the Municipality of Agandanan, first provisional volume of the Archive, volume 7, estate number 182, first inscription. Ilagan, September 17, 1898. Lic. Juan Garcia Rodrigo. Fees 65 pesos, 92

cents. Numbers 2, 3 and 7 of the tariff; Registry of Property of Isabella."

The Mortgage Law provides certain remedies for the refusal of a registrar to record an instrument, these remedies being in the nature of appeals either to the courts or to administrative officers. Article 18 provides that there shall be no other remedies for refusal to inscribe. The second note at the foot of Exhibit 8 does not recite that the inscription of 1898 was made by order of the court or a superior officer by virtue of an appeal. Either the Registrar Rodrigo acted illegally in reversing without authority the decision of his predecessor, Conde, or, as defendants urged, the inscription of the registry was forged.

"He (the registrar) cannot pass upon the documents already inscribed in the *same* registry or in the old 'contaduria'; but he can and he must pass upon the titles which before have been passed upon and inscribed or refused in *other* registers, and for which inscription is asked in his, because each register is responsible for his acts. *But he cannot pass upon the validity or nullity of those entries already made, which, from the mere fact of being made, are within the jurisdiction of the tribunals.*"

Galindo (*supra*), Vol. 2, pp. 18 and 19.

The first three paragraphs of Article 20 of the Mortgage Law forbids the recording of instruments transferring real property unless the interest of the grantor has been previously recorded, but the exception is made that a deed may be recorded where the grantor's interest was acquired before the day on which the Mortgage Law went into effect, and in such case the grantor's title must be justified by trustworthy documents, the essential features of which shall be indicated in the record. It has been shown that

Casal's title was not recorded. It was patent to the Court upon the presentation of Exhibits Nos. 1 to 7 that the recording of Exhibits 8 and 9 was not within the exception of the Mortgage Law, from the fact that the purported certificate of registration does not set forth the facts constituting such exception. For this reason alone the Court below erred in upholding the Trial Court in admitting Exhibits 8 and 9 in evidence.

It is an elementary principle of Spanish law, as well as of the common law of England and the United States, that one in possession of land is presumed to be its owner until the contrary is clearly made to appear; and this presumptive title arising from naked possession alone is good against all the world until one with a better title comes into court and establishes it by legal proof.

"The possessor by virtue of ownership has in his favor the legal presumption that he holds possession by reason of a sufficient title and he cannot be forced to show it."

Art. 448, Civil Code.
King *vs.* Mullins, 171 U. S., 404.
McGuire *vs.* Blunt, 199 U. S., 142.

That there is no difference in the Spanish law from the common law in reference to the character of proof in actions of ejectment is recognized by the Supreme Court of the Philippine Islands in this case.

Mr. Justice JOHNSON says:

"This is an action of ejectment. The doctrine is well established in an action of ejectment, the plaintiff seeking to recover possession of land occupied by another must recover upon the strength of his own title, rather than upon the weakness of the title of the defendant, and the burden of showing his title rests upon him who asserts it. Ordinarily, the plaintiff may prove his title by showing grants direct from the government, or by a connected

chain of title back to the government, or to some grantor in possession" (R., 192, fol. 354).

And Mr. Justice McDonough, in the dissenting opinion, said:

"It is, of course, primary doctrine that in a possessory action of this nature the plaintiff must rely on the strength of his own title, not on the weakness of that of the defendants."

We find the defendant in error alleges in the third paragraph of the amended complaint:

"That said company is the owner of some lands situate in the Town of Cayagan and Angadanan of this Province, known as the 'Hacienda * * * ' bounded on the north by the Rio Grande de Cayagan and by the land of Victor Guzman * * * ; on the east by the Cornayan Estero and by the public lands; on the south by public lands and by the Rio Grande de Cayagan; on the northwest by public lands and by part of the ranchos of Mabantad, Caraban and Andarayan; and on the west for its whole length by the Rio Grande de Cayagan; having a superficial area of 3,956 hectareas, etc.

"That the defendant illegally seized and continued to hold certain portions of the said property, which said portions together have a superficial area of 446 hectareas, approximately, as to the lots on which their houses and warehouses are built, distributed among distinct and separate parcels, *but all within the perimeter of the said estate above described.* And for the better understanding thereof the following statement is given of the parcels held by each one of the defendants:

"Dionisio Respicio holds a lot of 6 areas, approximately, on which he has erected a house and warehouse, with two parcels of arable land, one of which has an area of 9 hectareas and the other one hectarea" (R., pp. 7 and 8).

Then follows a like description of the lands of each of the other plaintiffs in error. Nowhere is there contained

any allegation whatsoever of the location of 446 hectareas or of the land held by any particular individual.

The answers deny the boundaries as set forth in the complaint and also deny any ownership of the defendant in error to the land in question. Consequently it was absolutely essential for the defendant in error to establish his title to the entire perimeter as described in the complaint before he could recover in this action.

As was said in Maddux *vs.* West:

"It is for the plaintiff to show his title up to the boundaries which he claims, and he can recover no further than he proves his land to run" (6 Ohio Dec., 1010).

Maxwell Land Grant Co. *vs.* Dawson, 151 U. S., 586. After briefly discussing the points involved, Judge PARADES, who tried the case in the Court of First Instance, said:

"For the purpose of deciding these questions, it is therefore necessary to examine and pass upon the following questions:

"First. Is the Compania General de Tabacos de Filipinas really the owner and possessor of the Hacienda de San Luis y la Concepcion with the situation, superficial area and boundaries described in the complaint? Unquestionably, this appears in the first place by documents 1 to 9, inclusive, all recorded in the Registry, and from the plan of document 10, which is an integral part of document 8" (R., 122).

The above conclusion reached by the trial judge and upheld by the court below, we respectfully submit, irrespective of all the other defects, which we have heretofore discussed, is absolutely unwarranted and could not be reached by any process of reasoning known to the law without an absolute disregard of the fundamental rule that the

allagata and *probata* must agree. This is made perfectly manifest by a comparison of the description of the "haciendas" in the complaint wherein it is alleged that it is bounded "on the north by the Rio Grande de Cayagan and by the land of Victor Guzman" (R., p. 7), with that in Exhibit No. 8 (R., p. 48), where the "haciendas" are described as bounded "on the north by the arable lands of Joaquin Guzman." Exhibit 9 is simply a confirmatory agreement between the same parties, and adopts the same description as contained in Exhibit No. 8 (Rec., p. 61).

The complaint alleges the land contained in the described boundaries amounts to 3,956 hectareas, 25 areas and 28 centiareas. Exhibit No. 8 says the land contained in the boundaries therein alleged is 2,902 hectareas, 71 areas and 78 centiareas, more than 1,000 hectareas less than the land claimed. It is true Exhibit No. 9 recites the amount of land conveyed to be 3,956 hectareas, 25 areas and 28 centiareas, but, as we have above pointed out, there is no difference in the description of the boundaries in Exhibit No. 9 from that contained in Exhibit No. 8. It is also incomprehensible how the Trial Court could have reached the conclusion *from the evidence* that Exhibit No. 10 was an integral part of Exhibit No. 8. There is not a scintilla of evidence, either intrinsic or extrinsic, that makes it such; and there are some things about it that tend to show it had no connection with Exhibit No. 8, for instance, on its face it directly contradicts the description of the boundaries of the land as described in Exhibit No. 8.

Sixth Assignment of Error.

During the examination of the witness Miguel Macias, Exhibits 1 to 7 were introduced in evidence, under objection of the defendants. The defendants stated their

grounds of objection. The trial judge, in passing on the objection, declared:

"That he should and would admit all the documents presented by the plaintiff, and such other documents as might thereafter be presented, because the case is open for the taking of testimony, and it was necessary to admit all kinds of evidence, more especially as the documents in question were apparently recorded in due form, and that the grounds of the objection would be taken into consideration in the final result" (R., p. 15).

During the examination of the witness the Trial Judge also warned defendants' counsel from stopping witness in his testimony (R., p. 17). This ruling is obviously prejudicial to the defendants, as it forbids counsel to present his objections and exceptions. In consequence of this ruling, it must be presumed that the defendants were greatly prejudiced, and that a great deal of incompetent matter appears in the record, to which no objection was interposed because of the warning of the Court. The failure to duly object may be well understood, and defendants' exception to the ruling which is so assigned as error must necessarily imply due objection and exception to all the improper evidence subsequently introduced.

Seventh Assignment of Error.

Exhibit No. 13 (R., p. 64) is a contract between the plaintiff company and a number of native farmers, including four of the defendants, in which contract these farmers, among other provisions, recognize the plaintiff's title to the land which they are working as tenants. There seems to be an uncertainty as to the purpose of the plaintiff in introducing this document. The plaintiff company stated that it was offered as evidence of acts of ownership exercised by it, and, further, to show that the defendants who

did not sign it were not at the time of its date in occupancy of the lands now in litigation (R., p. 17). The defendants objected to its admission, because it had not been set up in the complaint. It certainly is not clear how this instrument could be construed to be an admission which in any way bound the eighty-four defendants. The four defendants whose names purport to have been signed at their request by employees of the company may have been tenants as to the lands described in Exhibit No. 13. There is nothing in the exhibit to show that these lands are the same as those in litigation. On the contrary, all the lands therein referred to are in the District of Minanga, and the plaintiff does not claim in this action a foot of land in Minanga (see Exhibits 1 to 10), which, as plaintiff claims, comprises all the lands in litigation. The statement of the witness Macias that Exhibit No. 13 applies to the lands in litigation cannot avail to vary the terms of the instrument itself.

It is respectfully submitted that this instrument has no probative value as against any of the defendants, and that it could not prove or tend to prove that the seventy-nine defendants who did not join in this contract were not then in occupancy of the lands in suit is too plain for serious consideration.

Eighth Assignment of Error.

Exhibit No. 14 (R., p. 157) is a certified copy of a judgment rendered in favor of the plaintiff in an action brought against it by Nicolas Lacaste and others. It is introduced to show that "certain important witnesses of the defendants cherish a resentment toward the plaintiff" (R., p. 121). Lacaste, Dionicio, Cuntapa, Manuel Medina and Piedro Careaga were witnesses for the defendants, who were par-

ties to this judgment. In the cross-examination of Lacaste, plaintiff laid no foundation for the introduction of this judgment. These witnesses may not have had a feeling of affection for the plaintiff company, but it is submitted that there is no rule of evidence which discredits the testimony of a witness solely because he is not a friend of the party against whom he is called. None of these witnesses was a party to the present suit. It might be shown, however, that a witness who is a party to a suit might profit or lose by its outcome, but the law does not allow the presumption of truthfulness to be overthrown by a vague inference of possible resentment, which is all that can be adduced from Exhibit 14. The exhibit was undoubtedly irrelevant and immaterial and should have been excluded. The prejudice resulting to defendants by its admission appears from the fact that the Court apparently relied upon Exhibit 14 in weighing the testimony, for in its decision the Court disparages defendants' witnesses on the ground that some are plaintiff's manifest enemies (R., p. 125). That the Trial Court regarded it as of some value is very manifest from the decision. This error is assigned, although there is no specific objection and exception in the record, for the reason that the Court warned the defendants' counsel not to interrupt witnesses, and which fact is dwelt upon under the sixth assignment of error.

Ninth Assignment of Error.

Manuel Nieto, an employee of the plaintiff company, called as plaintiff's witness, testified to the authenticity of Exhibit No. 13, and stated that at the date of the execution of Exhibit No. 13 only four of the defendants were on the hacienda, because he had traversed the hacienda thoroughly at that time, and if there had been others of the defendants then within its boundaries they would have

signed the contract (R., p. 23). On cross-examination, defendants' counsel endeavored to ascertain from the witness what he understood or meant as to the extent of the hacienda. Exhibit 8 purports to be plaintiff's title deed, and contains a description of its lands, differing from that alleged in the complaint. Counsel asked, "Are you acquainted with Exhibit No. 8 and its contents?" The Trial Court replied, "That the witness was called to testify concerning Exhibit No. 13, and that his examination should, therefore, be limited to that point. As to whether he does or does not recognize the document No. 8, this is not a matter upon which he could be interrogated, because he did not present it, and if it is admitted that it speaks for itself, all questions would appear to be unnecessary. I therefore rule out the question, and beg you, for the sake of prompt administration of justice, to have the goodness to frame your questions less capriciously and make them more pertinent, because it does not appear to be just that a witness called to prove one particular fact should be tortured with questions which are enough to disconcert the most self-possessed of men" (R., p. 25).

It is submitted that greater latitude should have been allowed by the Trial Court in cross-examination. The abridging of this right by the Trial Court naturally restrained the defendants' counsel from ascertaining the truth by cross-examination at the expense of incurring the Court's displeasure.

Tenth Assignment of Error.

The Court erred in affirming the Trial Court's denial of defendants' motion for an order that the records of Canayan and Angadanan be brought into court for inspection and examination.

Section 330 of the Code of Civil Procedure provides:

"The record of a conveyance of real property, or any other record, transcript of which is admissible in evidence, cannot be removed from the office at which it is kept, except upon order of a court, or in cases where the inspection of the record is shown to be essential to the just determination of the case, or action, or proceeding, pending, or where the court is held in the same building with the same office."

Defendants denied the genuineness of Exhibits 8 and 9, and insisted that they were fraudulent and forged (R., p. 83 and 119), and requested an order that the records be brought into the court so that the signature might be examined and witnesses called who knew the true signature of the registrar. There were, moreover, certain irregularities apparent on the original registry tending to show illegality and fraud of the pretended registration of September 17, 1898, to the occupation of Ilagan by the insurgent force. These irregularities do not appear in the bill of exceptions because of the Court's refusal to allow defendants to present the original record, by which they alone could be shown. It is clear that the forgery and other defects alleged by the defendants could not be proven by the transcript of the registry. The production of the original records in court was essential to a determination of the validity of the registration of plaintiff's title deeds.

Article 795 of the Code of Civil Procedure expressly repealed all former laws affecting procedure, but the Court of First Instance held that Article 225 of the Mortgage Law, which forbids the removal of the books of registry from the registrar's office is still in force, although admitted to be inconsistent with Article 795 of the Code of Civil Procedure. For, says the Court:

"The present Code of Civil Procedure, being of a general

character, cannot, although of later date, derogate an earlier law of special character. The motion is denied."

In his opinion the Trial Judge states:

"I have made an ocular inspection of these signatures, and, although I must confess I have had no technical training as a handwriting expert, I have had, nevertheless, sufficient practical experience to be able to determine *a priori* whether a signature has or has not been falsified, imitated or forged" (R., p. 124).

And it is thus apparent the Trial Court contents himself with the declaration of his own ability to detect forgeries, however, carefully abstaining from any decision as to the genuineness of the signature under determination.

ELEVENTH ASSIGNMENT OF ERROR.

We submit that from what we have heretofore pointed out, under the former assignments of error it is perfectly plain that the judgment of the Court below cannot be supported upon any possible theory. Even should we concede for the sake of argument that the seven grants passed a good title, it is a superhuman endeavor to undertake to stretch 800 hectareas into 3900 hectareas claimed in the complaint. It is also perfectly manifest that the haciendas were supposed to have been made up of sixty grants, and there has been proof in this case of but seven. Consequently, a supposed map of the sixty grants, without the slightest degree of proof of the location of the other fifty-three, or to whom they were made, cannot show the location of the seven; especially in view of the fact that none of the seven were ever *located.*

When we examine the seven grants for the purpose of determining these boundary lines we find it is an absolute

physical impossibility for any human being to locate these tracts with or by the descriptions contained on the face of the grants, as in no one of the grants are there more than two natural boundaries given. The other boundaries are lands denounced by some of the other grantees, and all of the grants purport to have been made on the same day.

In conclusion, we therefore respectfully submit the judgment of the Court below should be reversed and the case remanded.

JOHN C. GITTINGS,
WM. STEELE GREY,
Attorneys for Plaintiffs in Error.

Office Supreme Court, U. S.
FILED.
APR 7 1909
JAMES H. McKENNEY,
CLERK.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 148.

MIGUEL TUPINO ET AL., PLAINTIFFS IN ERROR,

vs.

LA COMPANIA GENERAL DE TABACOS DE FILIPINAS.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR DEFENDANT IN ERROR.

ALDIS B. BROWNE,
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Attorneys for Defendant in Error.

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BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

From the bill of exceptions (R., 1) it appears that at the December term, 1902, of the Court of First Instance of the Province of Isabela, First Judicial District of the Philippine Islands, there came on to be tried the case of the General Tobacco Company of the Philippines, a corporation organized under the laws of the Kingdom of Spain, represented by its agent, Don Miguel Macias y Toro, plaintiff, against Miguel Tupiño, and others, defendants, the same being an action of ejectment.

Plaintiff's amended complaint (R., 7-13) alleges substantially that the defendants "above named," a list of whom,

eighty-four in number, had formed part of the title and caption of the original petition (R., 6) "for more than one and less than six years ago, illegally seized and continued to hold" certain "distinct and separate parcels" of the property of plaintiff; that the total area of said several distinct and separate parcels is something over four hundred and forty-six (446) hectares (about 1,100 acres), but that each of said parcels is within the perimeter of plaintiff's estate, the Hacienda de San Luis y La Concepcion, which estate is described in the original petition as having an area of about 3,956 hectares, or 10,000 acres, more or less. Then, "for a better understanding," says the amended complaint, a description of the eighty-four separate parcels occupied by each of the eighty-four defendants is given. The accuracy of each description is not denied in any one of the eighty-four distinct and separate answers filed. The amended petition then prays for judgment "for the possession of the said portions of the 'Hacienda de San Luis y La Concepcion,'" and "that the proper officer be directed to restore the said company, through its agent (naming him), to the possession of the various parcels of the said estate above indicated." It closes with a prayer that after eviction all the defendants be enjoined from thereafter disturbing plaintiff's possession, and asks for nine thousand (Mexican) dollars damages and costs. The bill of exceptions makes the unqualified statement above mentioned that this was "an action of ejectment," without mentioning the prayer for injunction.

After thus characterizing the action, it proceeds to set forth that the trial of the case began on the 11th and ended on the 24th of December, 1902; that the agent of the plaintiff company, the aforesaid Macias, having been called as the first witness, and duly sworn, offered and read in evidence seven deeds, marked Exhibits 1 to 7, inclusive, dated October 20, 1882, from the "Intendencia General de Hacienda de estas" (Sc. "Islas," meaning "of these Islands"), the Insular Treasury Department. These seven deeds were to seven

persons named and purported to convey title to lands comprehended within the "Hacienda de San Luis y La Concepcion." Defendants objected to the admission of said deeds in evidence, upon the ground that they were invalid on their face, in that they had not been (duly) recorded in the Province of Isabela, and that the grantees had not been placed in possession obediently to certain clauses in the deeds which defendants insisted were conditions precedent to the vesting of the estate. The court overruled the objections and defendants excepted. The deeds, Exhibits 1 to 7, are set out in full in the record (pp. 25-40).

Plaintiff also offered and read in evidence a deed marked Exhibit 8, dated October 31, 1887 (R., 43-54), from the executor of the estate of a certain decedent (who bought from the seven original grantees) to the plaintiff company, conveying a described tract of land "not including," says the bill of exceptions, "the premises in suit, which are described in said deed as forming the boundaries to the North and Northwest of the 'Hacienda de San Luis y La Concepcion.'"

It should be noted that the language quoted is purely gratuitous on the part of counsel who drafted the bill of exceptions. The certificate of the Judge to the bill of exceptions (R., 55), does not purport nor intend to vouch for the truth of all the recitals it contains because—

(1) Unlike most American statutes on this subject, the law cited in the body of the certificate, Sec. 143 of the American Code of Civil Procedure in the Philippines, does not specifically require the judge to certify that the recitals contained in the bill of exceptions are true.

(2) It is clear from his name that his honor, Don Isidro Paredes, is not an American, and from that fact it is presumable that he was not familiar with the American practice, under which the trial judge rigidly excludes from the bill of exceptions all recitals of fact deemed by him to be unwarranted.

(3) His rulings and final judgment hold, in express language and effect, the exact contrary of the erroneous recital of counsel above quoted.

(4) That the said recital is, in fact, untrue will appear from an examination of the deed—Exhibit 8, in connection with the map, Exhibit 10. It is not the "uncultivated lands" of the three ranchos mentioned, but the cultivated lands—those occupied by the defendants—that are in dispute.

Plaintiff also offered and read in evidence (R., 2) a document marked Exhibit 9, dated November 21, 1887 (R., 52-63), referring to the Hacienda de San Luis y La Concepcion, calling for a fraction over 3956 hectares, or as stated, about 10,000 acres, which purports to be merely an amplification of the aforesaid deed of October 31, previous.

Both said documents bear an entry showing that they had been recorded in the Registry of Property of Isabela Province on September 17, 1898.

Defendants objected to the admission of the two instruments upon several grounds. All these grounds, except one, presented issues of fact which were decided adversely by the trial court, whose judgment was affirmed by the Supreme Court of the Philippines. The one ground material to be noticed here, therefore, is the objection that the deeds had been defectively recorded. They were admitted in evidence after objection, and defendants assigned error upon this ruling.

Plaintiff next offered in evidence (R., 3) an instrument purporting to be a rent contract, dated February 29, 1896, between one Manuel Nieto, representing plaintiff company as landlord, and some fifty-one persons as tenants, among which fifty-one appear the names of four of the defendants. Defendants objected to the admission of this contract, on the ground that it was not alleged or pleaded in the complaint, which objection the court overruled, and to this ruling defendants excepted. After the evidence was concluded, and after argument had, a decision was rendered against the defendants "ordering them," protests the bill of exceptions

(R., 3), "to vacate the premises of which they have been in possession for periods ranging in time from two to thirty years."

The bill of exceptions was "allowed" and the Court directed the case to be forwarded to the Supreme Court of the Philippine Islands (R., 5).

Immediately following the bill of exceptions (R., 6-13), appear the original and amended complaint, whose contents, it is assumed, have been sufficiently indicated in the foregoing summary of the bill of exceptions to make clear the errors complained of.

Each of the eighty-four defendants filed a separate answer. All the answers were alike, therefore only one was sent up in the record. In the typical answer the defendant denies plaintiff's title to the land described in the complaint as held by the defendant. The typical answer appears on pp. 13-14 of the record. On page 227 of the record appears the statement as to the identity in form of all the answers.

Macias, the first witness for plaintiff (R., 14), the company's agent, offered and identified plaintiff's title deeds (Exhibits 1 to 9). He also offered (R., 16) a map of the Hacienda de San Luis y la Concepcion which, it appears, was marked Exhibit 10. This exhibit does not appear in the original record. The only trace of it there appearing is in the letter of the clerk of the trial court, addressed to the clerk of the Supreme Court of the Philippines, transmitting the transcript of the record, and stating that he sends the *original* map (Exhibit 10) because he has no copy. However, while the map is not essential to a clear understanding of the errors sought to be reviewed and corrected, same has been by proper stipulation embodied in the record (Supp.).

Macias testifies to surveys of the land made by the company in 1888, 1894, and 1901, and that no opposition was made to these surveys; also to the cutting of timber by the plaintiff company without opposition from any one, not even from the local officials of the Forestry Bureau; and to the assassination

of the company's employés, the allusion being to trouble with trespassers, apropos of which he says that—

> "the ownership of the company is sealed with the blood of its employés."

The contention of defendant in error is that the people who are causing all this trouble on their land are squatters.

During the direct examination of *Macias* occurred this question and answer (R., 16):

> "Q. What leads you to affirm that the defendants illegally detained and continued to illegally detain each and every one of the parcels in question?
>
> "A. Because each and every one of the parcels is comprised within the perimeter of the hacienda, *and they all knew that the said parcels really belonged to the company.*"

The words italicized should end this case as to all but five of the defendants; for only five of the eighty-four defendants denied the truth of them. Only five of the eighty-four defendants testified at all. Those five were Justo Allam, Zacarias de la Cruz, Augustin Dorone, Dionisio Respicio, and Teodoro Vidal. Of these Justo Allam appears to have signed the rent contract of February 29, 1896, Exhibit 13 (See R., 64.) So that if that document be genuine he has attorned to the plaintiff. He denies having signed it, and says that Macias wanted him to do so, but he refused. He claimed thirty years' occupation of the land of which, in the complaint, he was alleged to be wrongfully in possession. The trial court, with ample opportunity to see the witness in person and observe his manner of testifying on the stand, decided against him and its decision was affirmed.

Dionisio Respicio claimed in his testimony (R., 82) 12 years' occupation, without claiming to have any color of title.

Agustin Dorone, in his testimony (R., 85), claimed eleven years' occupation, but claimed no color of title. He testified that Dionisio Respicio was already there (on this land) when

he arrived. This man's evidence, and that of the other four defendants, is sufficient to show distinctly how utterly foreign to the idea of a "joint entry" and ouster is the attitude of both plaintiff and defendants in this case.

Zacarias de la Cruz, the fourth of the only five defendants who testified (R., 85), claimed eleven years' occupation, but claimed no color of title. He also testified that Dionisio Respicio was there—on the land—when he arrived and settled upon it.

Teodoro Vidal, fifth and last of the five defendants who did not remain mute in the face of Macias' declaration in their presence that they all knew the land belonged to the company, claims fifteen years' possession. Like the rest, he does not claim color of title.

Pursuing the thread of Macias' testimony, he was asked (R., 17) if four of the defendants, naming them, have attorned to the company, and answered in the affirmative, stating that they signed the rent contract (Exhibit 13) of February 29, 1896 (R., 64). *No one of the four persons thus named testified in this case.* Macias gives the key just here to the whole trouble. They repudiated their rent contract and claimed to own the land "when the revolution broke out" (1898) (R., 17).

Manuel Nieto, the next witness for plaintiff (R., 22-25), corroborates Macias about the rent contract of February 29, 1896. He speaks of it rather näively as "a contract with certain individuals who had taken the liberty of working lands belonging to the company," and that none of the signers objected to signing it, and he specifically mentions the only four of the defendants in this case whose names appear signed to the contract aforesaid, namely, Justo Allam, Arcadio Tubera, Eugenio Guzman, and Augustin de la Fuente, as having "voluntarily signed the contract without making any objection thereto" (R., 23). Asked if any others of the defendants besides the four above named were on the company's land in February, 1896, at all, Nieto said:

"No, sir, there were only those four persons because I went over the whole hacienda, and if there had been any other tenants it is evident that they would have all signed the contract."

Immediately following this answer, his examination proceeds thus:

"Q. How many years have you lived in the valley, and how many years have you been an employee of the company?

"A. I have lived in the valley twenty-six years, and have been an employee of the company since 1882.

"Q. What was your position with the Compania General on the 29th of February, 1896?

"A. I was representative of the Compania General de Tabacos in this province.

"Q. In what house was the contract in question signed?

"A. In a house which no longer exists.

"Q. Can you describe the situation of the house?

"A. It was a place on the hacienda very near where the warehouse now stands.

"Q. Were you present there all the time these men signed?

"A. Yes, sir; and afterwards I carried the document away with me.

"Q. Did you take the contract there already drafted, or was it drafted where it was signed on the date indicated?

"A. No, sir, it was drawn up after the terms of the contract had been discussed and after they were convinced that they were to sign a just agreement.

"Q. Do you remember how many hours were devoted to the drafting of the instrument and to the signature of the contract in question?

"A. It was all done in three hours, I believe."

Of the four defendants whose names appear signed to the contract of 1896, Justo Allam is the only one who can even pretend to have the slightest standing in court, because he

alone denied having signed it. The other three did not testify at all. Likewise, all the rest of the defendants who failed to testify are deprived, by Nieto's testimony, of all standing in court, because they did not deny his statement that in 1896 they were not on the land.

In view of an extended discussion in the dissenting opinion (R., 193-197), wherein it is assumed that a government survey was a necessary condition precedent to getting title from the Government under the Philippine Public Land Laws, the following from Nieto's testimony (R., 24) is material and pertinent:

> "Q. Were you present at the survey of the hacienda at any time, and if so, when?
>
> "A. Yes, sir; I was present at the survey before the hacienda belonged to the company. This was in 1882, if I recollect correctly.
>
> "Q. Are the lands which you assisted to survey the same as those which were subsequently transferred to the Compania General de Tabacos and which are now known as the Hacienda de San Luis y la Concepcion?
>
> "A. Yes sir, the same."

The cross-examination of the witness Nieto is framed with a view of showing that the deeds in evidence do not include the land in dispute. But the trial court held otherwise (Rec., 124-125), and its decision having been affirmed by the Supreme Court of the Islands, no attention will here be paid to the question of boundaries. In fact, that question was even waived by the dissenting opinion, (R., 194).

The record is not very systematically arranged, but it must be taken as we find it. Following the testimony of the witness just quoted from, appear Exhibits 1 to 13, covering pages 25 to 66 of the record.

Gregorio Soriano (R., 66), corroborates Macias as to the 1901 survey, stating that he is a surveyor and did the surveying.

Ignacio Flores' testimony (R., 69), shows most conclusively how foreign to this case is the idea of a "joint entry" and ouster. He also mentions happening to know where two of the defendants (naming them) lived in 1896, and gives as their places of residence at that time, places not on the land in dispute. One of these two did not deny this, for he was among those who failed to testify at all. The other did testify (R., 82), but did not deny this statement.

Lucas Mendoza, a witness for the defendants (R., 71), corroborated Macias and Soriano as to the 1882 survey of the Hacienda de San Luis y la Concepcion, saying he assisted in it, and in the next breath stultifies himself as follows (R., 72):

> "Q. Since when have you heard of the existence of an hacienda called San Luis and La Concepcion?
> "A. Since the last few days only."

The remainder of the testimony for the defendants, including their documentary evidence (R., 73-102), is immaterial, because it deals with questions of fact as to boundaries and other matters that were settled adversely to the defendants by the decision of the trial court and affirmed by the Supreme Court of the Islands. The only assignments of error before this honorable court are upon questions purely of law.

Jose Poo, a witness for the plaintiff company (R., 144-147), says he was storekeeper for the company at Cauayan in 1895. Thither the natives of the region round about brought their tobacco crops to be appraised and sold to the company at its store. He also says (R., 145) that none of the defendants were on the Hacienda San Luis y la Concepcion in 1896 except the four who signed the rent contract of February 29, 1896 (Exhibit 13, R., 64). The following from the record of his testimony (R., 145) is important, as corroborative of other evidence to the same effect hereinbefore quoted:

"Q. How do you know that all the persons who do not appear in the contract which you have just read were not on the lands included in the hacienda referred to, in the year 1896?

"A. Because the manager at that time, Don Manuel Nieto, ordered the employés in his confidence to go over the whole estate and to summon all the squatters to take part in the execution of the contract, which they did; and when they came, they stated that there were no other persons upon the hacienda."

Assuredly, this shifting of the burden of proof calls for a denial upon the part of the seventy-seven defendants who did not testify in their own behalf.

Manuel Rodriguez (R., 147-149) also corroborates Jose Poo as to the rent contract of 1896, as follows:

"A. Yes, I remember, and I was there with another employee of the company, Juan Duran now deceased, and we went from house to house of the squatters living on the lands of the company and told them to go to a house at Minanga, the name of whose owner I can no longer remember owing to the passage of time.

"Q. What was the object of giving this message to the persons you have mentioned in your answer?

"A. To get them to sign a contract acknowledging the ownership of the said lands by the company.

"Q. Was any document written out?

"A. Yes, sir.

"Q. Read Exhibit No. 13 and state if it is the contract to which you have referred in your preceding answer?

"A. Yes, it is the same.

"Q. Do you recognize the signature following at the foot of the said document as being your signature, in your own handwriting?

"A. Yes, sir, I recognize it.

"Q. Was coercion, intimidation, deceit, or other unlawful means used to force those people to sign?

"A. No sir, before they signed the contract it was interpreted into Ilocano and into Ibanag by me and

> others who spoke the dialect, and they consented and signed without any coercion."

Baldomero Guillen is the next witness (R., 149). It appears from his testimony that the survey of 1882, in which the witness Nieto (R., 24) swears to have taken part, was a Government survey. He says (R., 151):

> "Q. Do you know whether a Government Surveyor had ever surveyed the hacienda in question?
>
> "A. I know that when the Company bought these lands that part of them belonged to Senor Casal and part of them to the government and that Rogelio Agustin del Olmo came to measure them and that he was at that time an employee of the Forestry Department.
>
> "Q. Do you know if the said Rogelio Agustin del Olmo surveyed the estate by executive order?
>
> "A. I suppose so because he came by order of the General Inspector of the Forestry Department, where the order may perhaps be found if it has not been lost in this time."

Surely the learned author of the dissenting opinion (R., 193) must have overlooked this testimony, for he says (R., 193):

> "No survey of the lands was made by the *government.*"

E. T. de Andrade (R., 152) corroborates Rodriguez, Poo, *et al.*, as to the contract made with the squatters on February 28, 1896.

Luis de la Vega (R., 154) shows beyond all doubt that the parcels of land which these squatters have occupied were *not* outside of, but *within* the boundaries of the Hacienda de San Luis y la Concepcion.

Mariano Claravall (R., 155) testifies that Dionisio Respicio, the defendant who swears to twelve years' possession previous to the filing of this suit (1902), was living in Ilagan in

1893-4, the seat of government of Isabela province, and where this trial was had.

Foregoing recital from the evidence is admittedly immaterial here. It is presented, however, only to demonstrate the correctness of the findings of the trial court, which following a full *résumé* of the evidence tersely concludes:

> "The lands then, which the defendants possess and "wrongfully hold are unquestionably within the peri-"meter of the hacienda in question" (R., 125).

This finding is, in terms, affirmed by the Supreme Court in its decision (R., 172), and upon this writ of error is conclusive here.

ARGUMENT.

I.

In sustaining the title of defendant in error to the land in dispute, Chief Justice Arellano was very brief (R., 172-174).

The defendants in the suit having objected at the trial to the admission in evidence of the title deeds offered by the plaintiff upon the ground that they had been defectively recorded in the Registry of Property of the province where the land lay, the Chief Justice held that the record was conclusive as to ownership until canceled by the judgment of a court, based upon petition, and proof of a better right on the part of some other person claiming to be the lawful owner. This meant that plaintiff's recorded title deeds were *prima facie* evidence of ownership, placing the burden of proof upon the defendants.

As has already been stated, defendants had also objected, at the trial, to seven of the title deeds under which plaintiff claimed. These deeds were from the Government to certain persons who afterward sold to the plaintiff's grantor. The objection was that they were null and void by reason of the

failure upon the part of the grantee to fulfill certain conditions contained in them. The Chief Justice sustained the trial court in overruling the objection, basing his reasons upon the Spanish civil code (R., 173).

The other two Spanish-reared members of the Philippine Supreme Court concurred. Associate Justice Johnson, one of the American members of the court, filed a concurring opinion (R., 174-193), "because," says he in the outset, "it has been contended that his (the Chief Justice's) opinion is contrary to the weight of authority in the United States." He then enters into an able and exhaustive exposition of the American cases cognate to the subject.

Each of the seven deeds from the Government contains the following provision (all being substantially the same; R., 25-43):

> "I (here follows the name of the Government official authorized to issue titles) issue this title, so that by virtue thereof the (grantee) may be declared the lawful owner of said land. This title shall be entered in the Central Administration of Government Monopolies *and subsequently presented to the Politico-Military Government of Isabela de Luzon, under pain of nullity if the contrary is done, so that it may be entered in that Government and possession may be given in the usual legal form.*" (R., 193.)
>
> For the full text of this deed, see R., 174; also R., 25.

The aim of Justice Johnson's concurring opinion is to show that the conditions contained in the italicized words were *conditions subsequent*, and that title vested in the vendee as soon as he paid his money and received his deed.

Mr. Justice McDonough, however, who filed a dissenting opinion, insisted that these conditions were conditions *precedent*, that no title whatever vested in the grantee at the time of the execution and delivery of the deed to the vendee, that the conditions contained in the deed were not complied

with as therein directed, and that therefore the grantee never did acquire title.

It appears that the seven deeds in question were duly recorded in the proper office at Manila, the seat of government, in the office of the "Central Administration of Government Monopolies," as directed in the body of each deed, on the same day the deeds were executed, October 20, 1882. They were not recorded in Isabela Province until 1898, sixteen years later. There was no general law in the Philippines requiring registry of property until 1889. An attempt at registry was made in 1895 (R., 51). Under the Spanish Civil Code, Sec. 1949, prescription does not run in favor of a squatter as against one holding under a recorded title.

Unlike the opinion of the court delivered by the Chief Justice, both the concurring opinion of Justice Johnson, and the dissenting opinion of Justice McDonough seem to assume a failure to comply with the conditions contained in the aforesaid title deeds, both jurists directing themselves exclusively to the question whether the said conditions were "precedent" or "subsequent."

Before considering the two opinions, it may be well to bear in mind that the vendee not only paid the government the value of the land at the time of the execution and delivery of the deed, which fact is recited in the deed itself, but the purchaser from said vendee (from whom defendant in error bought) went into actual possession of the land, and has been raising tobacco on the land ever since. (See statement, *supra.*)

It should also be noted that the deed which is dated October 20, 1882 (R., 25), shows on its face that on July 6 previous, the grantee had made application to the land office for a piece of public land situated in a named neighborhood of a named province and was awarded the ownership upon condition of payment of its value and the statutory fees. The deed now recites the value and acknowledges receipt of payment of the sum deemed to represent that value (pre-

sumably ascertained in the meantime). It also now acknowledges receipt of the statutory fees. These, the deed tells us, consist of a fractional sum dependent on the value of the land, called "Media Annata," and a sum (presumably a fixed sum) for now issuing the title pursuant to the terms of the original conditional grant. Clearly the value of the land was to be ascertained in some statutory way after the permission was given. This having been done the grant is made absolute. As to the fee of "Media Annata," what the term means in the Philippine Public Land Laws, the Spanish law dictionaries do not state, but "media" means half, and the Century Dictionary, as well as the Spanish law books, disclose that in ecclesiastical law, annata meant certain fees which became due upon appointment to a benefice—*i. e.*, when an interest in certain realty *vested* in the grantee.

The only two elements which prevent the discussion between Justices Johnson and McDonough from being purely academic are:

(1) The sixteen years' delay in having the deeds recorded.

(2) The circumstance that the Spanish laws relating to and authorizing the sale of public lands in the Philippines were not contained in the briefs submitted to the Philippine Supreme Court in this case, nor were they presented to that court in argument (R., 194); so that it did not appear what constituted delivery of possession "in the usual legal form" in the Philippine Islands when these deeds were executed. Judge McDonough mentions this circumstance and then says (R., 194):

> "On account of their absence I may assume that the practice here was similar to that under which grants were made in other Spanish colonies, and which grants contained similar conditions."

And upon this rock he builds the temple of his argument. We respectfully submit

(1) That this assumption is unwarranted;

(2) That it is reasonable to infer that it is erroneous, since the Spanish-reared, native-born members of the court, presumably familiar with the Philippine land-grant laws, considered the title of the defendant in error good and valid;

(3) That after the purchaser of land has been in possession of it for a score of years or more it is immaterial whether or not he complied with "the usual legal form" in getting possession.

The very grave injustice which Judge McDonough's assumption would work to the defendant in error becomes apparent in the language immediately following his announcement of that assumption. He at once takes up, as evidence of what the Philippine law as to delivery of possession "in the usual legal form" is, and how it should be construed, certain decisions of this honorable court upon the validity of grants made in California when California belonged to Mexico, as showing that a preliminary survey by a government official should appear among the title papers, and an order of a court procured putting the purchaser in possession of the land so surveyed.

"The importance of and proceedings relative to the delivery of possession in the 'usual legal form,'" says Justice McDonough (R., 194), "are described by Justice Field in the case of Pacheco (Malarin, he means—Malarin was Pacheco's executor) *et al. vs.* The United States (1 Wall., 282-289) as follows:

> "When the grant to Pacheco was issued there still "remained another proceeding to be taken for the "investiture of the title. Under the civil as at the "common law, a formal tradition or livery of seisin "of the property was necessary. As preliminary to "this proceeding the boundaries of the quantity "granted had to be established when there was any "uncertainty in the description of the premises. "Measurements and segregation in such cases, there- "fore, *preceded* the final delivery of possession.
>
> "By the Mexican law various regulations were pre-

"scribed for the guidance, in these matters of the "magistrates of the vicinage.

"The conditions annexed to the grant in the case "at bar required the grantee to solicit juridical pos- "session from the proper judge. In compliance with "the requirement, within four months after the is- "suance of the grant, he presented the instrument "to the judge of the district, and requested him to "designate a day for delivering the possession. The "judge designated a day, and directed that the ad- "joining proprietors be cited, and that measurers "and counters be appointed. On the day designated "the proprietors appeared, and two measurers and "two counters were appointed and sworn for the "faithful discharge of their duties. A line provided "for the measurement was produced, and its precise "length ascertained. The measurers then proceeded "to measure off the land, the judge and the pro- "prietors accompanying them. The measurement "being effected, the parties went to the center of the "land, and there the judge directed the grantee to "enter into the possession, which he did, and gave "evidence of the fact 'by pulling up grass and mak- "'ing demonstrations as owner of the land.' Of "the various steps thus taken * * * a complete "record was kept by the judge in the * * * "'book of possession.' * * *

"The ownership, extent, and general location of "the land were matters thus brought within the "knowledge of the neighborhood, and were no doubt "afterwards the subjects of frequent reference among "the adjoining proprietors."

The recurring *leit-motif* of the whole of the dissenting opinion is that

"No survey of the lands was made," and no "juridical pos- session" was given.

In the first place, how does the learned judge know there was not a Government survey of the lands in Isabela province already on file in the office at Manila from which these title deeds issued *at the time they issued?* If

a survey was necessary before these titles issued, we have a right and it is our legal duty to the Spanish Government to presume that such a survey was made. Moreover witnesses Nieto and Guillen (see Statement, *supra*) swore that a survey—a Government survey—was made, though the plat of that survey is not attached to the title papers. If Justice McDonough is referring to a survey to be made *after* the issuance of these grants, by what authority does he assume that the Spanish law then existing required such a survey? He finds in the deed itself a requirement that it shall be presented for entry to the authorities of Isabela province, and that possession be given "in the usual legal form." But where does he find his authority for the proposition that at the time these deeds were executed and issued, or at any other time whatsoever for that matter, the Spanish law in the Philippine Islands required that a person who bought a piece of public land from the Government at Manila, after complying with all the preliminary formalities there required, paid for it, and got a deed to it (which specifies certain further formalities, but says nothing whatever about any survey), must procure a survey by the Government and have a plat attached to his title papers?

The author of the dissenting opinion, as already indicated, confesses himself unacquainted with "the laws relating to and authorizing the sale of these public lands" (R., 194), and notwithstanding that the majority opinion of the court, which confirmed the validity of this title, is delivered by one presumably well acquainted and skilled in the Spanish Colonial Laws for the Philippines, the learned dissenter practically announces in the outset of his opinion a purpose to guess at the law on which his dissent is to be based.

In the Pacheco case (1 Wall., 282) it appears (p. 285) that as part of the "livery of seisin" the petitioner entered into the possession "by pulling up grass and making demonstrations as owner." Further than the fact of his citing the Pacheco proceedings as illustrative of "the usual legal form"

of getting possession of land, it does not appear whether Justice McDonough considers "pulling up grass" to be essential or not. Evidently he does not believe that the fact of our having gotten a deed to the land and having at once gone into possession of it, and having been there ever since cultivating the land, is enough.

Even in his unauthorized assumption "that the practice here (in the Philippines) was similar to that under which grants were made in other Spanish colonies" he adds, after the words just quoted *"and which grants contained similar conditions."*

Now the Pacheco grant, on which he relies, specifically required the grantee "to solicit juridical possession" from the proper judge. The language of this court as to the Pacheco grant, quoted by the Philippine judge (R., 195), is:

> *"The conditions annexed to the grant* (meaning, of course, *contained in* the grant) in the case at bar required the grantee to solicit juridical possession from the proper judge."

The deeds under which defendant in error claims *contain no such condition*. They do not require any further survey or measurement whatever. They simply describe the tract deeded, stating how it is bounded on its four sides and that it contains so many hectares, stating the number.

The reason of the Mexican law is clear. California was a wild and unsettled country then, and the Government wanted it settled. Under its law a man might, and did often ask for a concession or grant of say 10 square miles to be laid off to him by the Government surveyor in a specified territory or region of 100 square miles, giving the general geographical name of such territory or region. Of course he got nothing until the land was laid off by survey. The original concession was a mere permit to have the land laid off. Of itself it passed no title. The survey, etc., was a condition precedent to the vesting of title. On the other hand, Luzon Island, where the land now in dispute lies, had, at the time

these deeds were issued, been quite effectually occupied for several hundred years.

The next case cited in the dissenting opinion after Pacheco *vs.* The United States is *Bouldin vs. Phelps*, 30 Fed. Rep., 547. Attention is invited to the following extract therefrom, quoted on page 195 of the record:

> "There was no record made of the grant as re-
> "quired by law; the public record thereof, and not
> "the document delivered to the party, was the ef-
> "fective grant. There was no *juridical possession*.
> "The title, therefore, did not become definitely vested.
> "A grant can not perfect or complete the title where
> "anything remains to be done to perfect it."

Again we hear the ever-recurring note of the dissenting opinion, the apparent demand for *juridical possession*—possession obtained by order of some court based upon petition and satisfactory proof—as being essential to "the usual legal form" of obtaining possession of land sold by the Government. Evidently the title of defendant in error is not good, in the eyes of the dissenting justice, unless he complied with the laws of Mexico, which governed the acquisition of title to public lands in California prior to the cession thereof to the United States in 1846.

The only reply necessary to be made to this part of the opinion is to quote the eighth headnote from *Bouldin vs. Phelps*, in order to show that it has nothing to do with the public-land laws of the Philippine Islands:

> "By the Mexican system, under which public lands
> "were granted, *juridical possession* constituted in-
> "vestiture of title."

Counsel for defendant in error differ also with the author of the dissenting opinion in regard to the true intent and meaning of *More vs. Steinbach*, 127 U. S., 70, which he cites in support of his contention that the deeds from the Philippine Government, under which defendant in error claims, are invalid.

Attention is invited to what he quotes from and says about that case (R., 195-196). An examination of the report of the case cited shows that Steinbach and others, plaintiffs in the trial court and appellees in this court, claimed under a patent issued by the United States in 1874. More and others, defendants and appellants, claimed under a grant of the Mexican Governor of California to one Jimeo, prior to the cession of California by Mexico to the United States, July 7, 1846, on which said date the authority and jurisdiction of Mexican officials terminated. (*More vs. Steinbach*, 127 U. S., 80). The terms of the grant in *More vs. Steinbach*, like that in the Pacheco case, required a survey of the lands to be made by the Government surveyor and a formal putting in possession—juridical possession. In fact the opinion in *More vs. Steinbach* actually *cites* the Pacheco case in this connection. For lack of compliance with the said conditions contained in it, defendant's grant had clearly vested nothing in him up to the time the Mexican regime ended in California on July 7, 1846. He tried to remedy matters by fulfilling, on November 17, 1847, the conditions contained in the deed as to survey and getting placed in possession, invoking for that purpose the services of the American alcalde elected by the people. But this court held that it was too late to do that, as the American law of procedure in such matters went into effect in California on July 7, 1846.

> "The authority and jurisdiction of Mexican offi-
> " cials terminated on the 7th of July, 1846. On that
> " day the forces of the United States took possession of
> " Monterey, the capital of California, and soon after
> " occupied the principal portions of the country, and
> " the military occupation continued until after the
> " treaty of peace. The political department of the
> " government designated that day as the period when
> " the conquest of California was complete and the au-
> " thority of the officials of Mexico ceased. In this
> " matter the judiciary follows the political."
>
> "After that date no alcalde elected by the citizens
> " had any jurisdiction to deliver judicial possession.

> "This was distinctly held in the case of Fremont *vs.*
> "The United States, 17 Howard 542, 563."

Defendants sought to meet the decisive force of this ruling by invoking the doctrine that "the laws of a conquered or ceded country, except so far as they may affect the political institutions of the new sovereign, remain in force after the conquest or cession until changed by him," but the court held:

> "That doctrine has no application to laws authorizing the alienation of any portion of the public domain, or to officers charged under the former government with that power."

Clearly the grant under which defendants claimed had vested no title in them up to July 7, 1846, the date of the annexation of California, and it was too late, after that date, to invoke Spanish methods of procedure..

In the light of the foregoing, attention is now confidently invited to that part of the decision of this court which Justice McDonough seems to consider as holding that because a grant under a Mexican law giving the grantee a permission to locate and survey a claim, and entitling him in such event to official delivery of possession under the Mexican Government, vests no title until the conditions precedent are fulfilled, therefore a grant under Philippine law *containing no such conditions* is void.

The language of this court which he relies on held (R., 196):

> "That the grant under which they (defendants)
> "claimed to have acquired a perfect title conferred
> "none. The grantees were not invested with such
> "title and could not be without an official delivery of
> "possession under the Mexican Government; and
> "such delivery was not had and could not be had
> "after the cession of the country except by the Ameri-
> "can authorities acting under a law of Congress."

We now turn to the decision of this court in the Fremont case, as to which the dissenting opinion of the Philippine judge in the case at bar (R., 196), insists:

> "If that (Fremont's) case be in conflict with the "More case, *supra*, it (is) by implication repealed by "this later decision."

But the opinion in *More vs. Steinbach* cites the Fremont case *once and once only and then approvingly.* In holding that after July 7, 1846, the date of the annexation of California, "no alcalde elected by the citizens had any jurisdiction to deliver judicial possession," the opinion in *More vs. Steinbach* says:

> "This was distinctly held in *Fremont vs. The United States,* 17 Howard, 542, 563."

Again, the Fremont case purports to be and is a leading case on claims to California lands under Mexican land grants. And certainly when Mr. Justice Field, in 1887, rendered the opinion of this court in *More vs. Steinbach,* he was not ignorant of this fact. In the Fremont case, the opinion, delivered by Chief Justice Taney, begins thus:

> "The court have considered this case with much at- "tention. It is not only important to the claimant "and the public, but it is understood that many "claims to land in California depend upon the same "principles, and will, in effect, be decided by the judg- "ment of the court in this case."

On page 197 of the record in the case at bar, Justice McDonough's dissenting opinion quotes from what Chief Justice Taney said in the Fremont case about the Spanish grants of public lands in Florida and Louisiana prior to the Florida cession and the Louisiana purchases as follows:

> "But, until the survey was made, *no interest, legal or equitable, passed in the land.* The original concession granted a naked authority or permission and

> nothing more. * * * The examination of the surveyor, the actual survey, and the return of the plot were *conditions precedent,* and he had no equity against the Government and no just claim to a grant until they were performed."

After the quoted passage the opinion in the Fremont case proceeds to review the decisions of this court concerning the Louisiana and Florida land grants at length. It then repeats, in substance, the above ruling and adds:

> "The instruments under which they claimed were "evidently not intended as donations of land, as a "matter of favor to the individual, or as a reward for "services rendered to the public." * * * "up to "the time when Spain ceded them (the lands), the "parties had done nothing to accomplish the object, "or to carry out the policy of the Government. Be- "fore they could claim anything the survey was a "condition precedent." (See p. 555 of the Fremont case.)

Turning now from the Florida and Louisiana land grant cases, referred to by Chief Justice Taney in the language quoted, to the grant to Alvarado (from whom Fremont bought) the Chief Justice uses the language quoted on page 187 of the record in the concurring opinion of Justice Johnson (R., 187). He further holds, in the next paragraph after the one Judge Johnson quotes, that the Alvarado grant was not "a mere permission to make a survey—and return a plat—of the land he desires, with a promise from the Government that he shall have a title to it when these things are done." "But (p. 558) the grant, after reciting that Alvarado was worthy, for his patriotic services, to be preferred in his pretensions for his personal benefit and that of his family * * * proceeds in the name of the Mexican nation to grant the aforesaid tract." And the court specifically holds that a grant on account of patriotic services is "as firm and valid as if * * * purchased with money." Because the

original grantee from the Government in the case at bar paid for his deed in money at and before the sealing and delivery of the deed, the grant at once vested an immediate interest in him. Because he had rendered patriotic services to his country, Alvarado's grant placed in him, "as between him and the Government," (p. 558) an immediate vested interest "in the quantity of land mentioned in the grant."

It is axiomatic that a deed of gift based upon a good consideration is as binding upon the donor, and operates to pass title as effectually, as a deed of sale based upon a valuable consideration. A gift to a citizen from his Government "in consideration of the previous public and patriotic services of the grantee" is as clearly based upon a good consideration as a gift from a father to his son in consideration of natural love and affection. Justice McDonough fails to distinguish between grants of public land of this sort and concessions intended to carry out a colonization policy, containing permission to survey off and segregate from the public domain a specified quantity of land, coupled with a promise of a deed to such land when surveyed.

Referring to the penultimate paragraph of the dissenting opinion (R., 197), it appears that in the grant to Alvarado there discussed (which he sold to Fremont) the Mexican Governor who signed the grant waived the presentation of the preliminary sketch of the land sought along with the petition. His order granting Alvarado's petition required, as one of the conditions of the grant, that a survey and an authoritative sketch or plat be made and filed. This court held that this *laches* might have militated against Alvarado's rights, as against some more diligent grantee who should locate and survey off a part of the land, in case Alvarado should afterwards overlap him; *aliter*, as against the Government.

In regard to the prohibition in the Alvarado grant against the grantee's subsequently selling the land, Chief Justice Taney holds the prohibition invalid because forbidden by the then existing laws of Mexico (p. 564).

Justice McDonough seems to be quite positive in refusing to accept the Fremont case as signifying "that conditions of the nature discussed here (in the case at bar) were conditions subsequent." We confidently submit that we have shown that it did so signify. We do not claim that the Fremont case "turned" on that point alone, but we respectfully insist that it settled that point, and that More *vs.* Steinbach, *supra,* not only did not, as Justice McDonough suggests, "repeal" by implication the doctrine of the Fremont case as to conditions subsequent, but that it had not the slightest intention or purpose to question the wisdom and authority of that celebrated case, and that it left it as it found it, and as it still continues, the cornerstone of innumerable titles based on Mexican land grants in the State of California.

The doctrine therein announced was reaffirmed in *Hornsby vs. United States,* 10 Wall., 224. That case is most instructive in its application to the case at bar. Therein the several *kinds* of grant made under the Mexican Government are thus stated:

> "1st. Grants by specific boundaries, where the "donee was entitled to the entire tract described;
> "2d. Grants by quantity, as one or more leagues "situated at some designated place, within a larger "tract described by outboundaries where the donee "was entitled out of the general tract only to the "quantity specified, and
> "3d. Grants of places by name, where the donee "was entitled to the tract named according to "the limits, as shown by its settlement and possession, or other competent evidence."

As in the Fremont case, the grant involved in the Hornsby case was one of quantity within larger boundaries, the second class noted above, and as in the Fremont case the Hornsby grant contained the express condition, *inter alia,* that

"2d. They shall solicit the proper judge to give "them juridical possession by virtue of this decree, "and he shall mark the boundaries with the proper "landmarks."

Admittedly this was never done nor was the petition for the grant accompanied by the plat or deseño required by Mexican law. In commenting on all these objections and sustaining the validity of the grant this court broadly reaffirmed the doctrine of the Fremont case, holding, after consideration of some facts appearing in that case excusing application for juridical possession (p. 240):

"But independent of the considerations stated, it "is a sufficient answer to the objection to say, that "mere neglect to comply with the condition did not "of itself work a forfeiture of the grantees' right "under the Mexican law. The neglect of a grantee to "apply for or to take possession, if unreasonably pro- "longed, only left the land open to denouncement by "other parties. The interest of a grantee could not "be divested under the Mexican law any more than "at the common law, upon mere allegations or sur- "mises. Some formal and regular proceedings were "required to effect such divestiture, and under the "Mexican law these had their inception in what is "termed a denouncement by a party desirous of ob- "taining the land. An investigation then followed "whether or not the condition had been complied "with or so disregarded as to justify a decree of for- "feiture. Without such inquisition and decree the "title did not revert to the Government, nor was the "land subject to be regranted.

"The object of the colonization laws and regula- "tions of Mexico was the settlement of the vacant "lands of the Republic, and grants were usually made "to accomplish this purpose without other considera- "tion. But the public, as observed in the Fremont "case, 'had no interest in forfeiting them even in "'these cases, unless some other person desired, and "'was ready to occupy them, and thus carry out the "'policy of extending its settlements.'"

Certainly this doctrine must apply here where the land was (1) *purchased* for a valuable consideration paid the former Government; (2) was granted by specific description, and (3) where possession in fact, under such title, is here expressly found.

The assumption of Justice McDonough (R., 194) "that the practice (as to granting titles to public lands) here (in the Philippines) was similar to that under which grants were made in other Spanish colonies," and that, such being the case, the grants in the case at bar were defective because the purchaser from the State had never obtained "juridical possession," was not an unnatural mistake. At one time, in the Sixteenth Century, Spain had one set of public land laws for all her colonies. These laws appear in the form of a "new Compilation of the Laws of the Indies," including both East and West Indies, published at Madrid in 1682. They were made available to this court and the members of its bar by the valuable compilation and translation of "Spanish Colonial Land Laws" prepared in 1828 under the direction of President Adams, by Mr. White, special assistant attorney for the Government in the Florida land grant cases.

In Lib. IV, Tit. 12, Law 17 of the "Laws of the Indies" (White's "Spanish Colonial Laws," pp. 42-3), we find provisions made for the courts ("Audiences" — Sp. "Audiencias") to intervene in the formalities incident to granting public land to private individuals. However, this same Lib. IV, Tit. 12, Law 17 of the "Laws of the Indies," is quoted in a compilation of the Philippine Public Land Laws, published by an eminent Spanish jurist, Don Miguel Rodrigo Berriz, at Manila, in 1886, called "Guide for the Purchaser of Public Lands in the Philippine Islands." ("Guia del Comprador de Terrenos Baldíos y Realengos en Filipinos"); and immediately after quoting said "Law 17," Senor Berriz makes this note:

> "The courts no longer intervene in the disposition and sale of public lands, such matters being now at-

tended to by the Forestry Bureau, the Revenue Office, and the Treasury Department."
Berriz' Guide, &c., p. 8.

And, again, on page 31 of Berriz' "Guide," is published a circular letter bearing date August 26, 1881, which was sent out from Manila to all the provincial governors, and reads, in part:

> "Bear in mind that all proceedings for the setting "apart of public lands, *absolutely all*, are *administra-* "*tive matters*, with which the court (of your prov- "ince) has nothing to do, and consequently can ex- "act no fees in connection therewith from the parties "interested."

And again, on page 419, *et seq.*, is another circular dated September 30, 1881, dealing with certain difficulties which have arisen in the practical operation of the Royal Decree concerning the sale and setting apart to private persons of portions of the public domain. It divides these difficulties into two kinds, the first being connected with the probable failure of the natives to apprehend the advantages offered by the law, and a consequent failure on their part to take any action seeking to avail themselves of its provisions. Turning then to the second class of obstacles met with, the circular proceeds:

> "First and foremost among the obstacles (of this "kind) which presented themselves, were the ex- "penses which the natives supposed would be en- "tailed by the proceedings; and as to this, Your Ex- "cellency has already been advised that these appli- "cations are to be handled exclusively through the "executive departments of the Government, and that "therefore they would involve no expense and would "entail no fees. The word *'property,'* the phrase "'legitimate the (title to the) property,' and the cir- "circumstance that questions involving the trial of "title to lands are cognizable by the courts, have "doubtless caused some persons to suppose *errone-* "*ously* that the petitions and proceedings, and (the

> "putting the applicant in) the *possession*, under the
> "public land laws, would be judicial acts, etc."
> Berriz' Guide, etc., p. 420.

And, again, in the Royal Order of October 26, 1881, page 70, paragraph 4:

> "No fees shall be collected for the proceedings put-
> "ting the applicant in possession of the lands granted,
> "but such proceedings shall be had free of charge
> "through the administrative arm of the Govern-
> "ment."

On page 103 of Berriz' "Guide" appears a decree of the Treasury Department (Intendencia General de Hacienda), in favor of Messrs. Baer, Senior & Co., merchants of Manila, dated October 17, 1882, which refer to certain lands lying in Isabela Province, "which were awarded (to Baer & Co.) at the public auction held on September 6 last." This declares a policy and purpose to construe the laws looking to the disestablishment of the Government monopoly on tobacco liberally, alludes to certain untoward events which have recently happened in Isabela Province, recites that "for the Central Treasury (at Manila) to accept payment for land acquired in the provinces" will save unnecessary delay, and finally

> "authorizes the purchasers of public lands to pay into
> "the Central Treasury, if they desire, the price of
> "the lands that may have theretofore been awarded
> "to them, such funds to be regarded as remittances
> "from the sub-treasury in the province where the
> "land lies."

Berriz' "Guide for the Purchaser of Public Lands in the Philippines," purports in its alternate title to be a correct "general compilation of the Royal Circulars, Laws, Ordi-"nances, Regulations, Instructions, Royal Decrees, Decrees, "Royal Orders, Orders, Superior Decrees of the Governor-"General, Decrees of the Treasury Department and of the

"Central Directorate of Civil Administration, pertinent to "the subject" to the number of about two hundred and thirty, stretching over the period from 1682 to the date of the publication of the book, 1886.

There is no index to the work, nor does it attempt to digest and codify this mass of legislation. Often a general comprehensive law appears which was evidently intended to supersede an earlier law on the same subject; yet the later law instead of striking from, amending, or adding to, the old law, simply concludes with a general clause repealing all law in conflict with itself.

We therefore add the following pertinent extract from Berriz which relates to sales where the property (as in the deeds in dispute) was appraised at less than $200, relying for the rest upon the uniform decisions of this court, that it will give full faith and credit to recitals in such a document of compliance with the legal formalities precedent to the issuance of it. On page 645 of Berriz's Guide appears a royal order dated June 11, 1884, which recites that it is responsive to a petition addressed to the Madrid Government by the General Tobacco Company of the Philippines (the defendant in error). It declares that a certain royal decree of the year 1883 (which was the year *after* the one in which the deeds in dispute in the case at bar were issued) concerning grants of titles to public lands was not retroactive. Immediately following this royal order is a decree of the Philippine Treasury Department, made pursuant to it, which decree, while it only affects applications under the public land laws for parcels appraised at more than $200, nevertheless recites that

> "according to the legislation anterior to the said "regulations (of 1883), the said lands (meaning "public lands) were *granted directly to the de-* "*nouncers, upon payment of the purchase price and* "*the cost of the proceeding, where this amount was* "*less than $200*, according to the appraisement, and "were sold at public auction to the highest bidder, "where appraised at more than $200."

The consideration of each and every one of the seven deeds now in question is less than $200. Clearly, the formalities of the Philippine public lands at the time of the execution of these deeds were extremely meager as to tracts approved by the Government's officials at less than that amount.

II.

Taking up in order the several assignments of error, and the brief in support thereof, we submit:

A.

The validity and regularity of the sale of these lands by the Spanish Government, and the deraignment of title in fact from the original grantors to the present defendant in error, is not assailed. In other words, the genuineness of the transaction is not disputed. The sole contention in this regard is that the formal instruments of grant from the Spanish Government were not, in the view of counsel, properly recorded. And in that view, as we understand their argument, the contention is narrowed to the single proposition that the certificate of registration appearing on each of the deeds (Exhibits 1-7) is evidence only of the recordation of the deed from the State's grantee to Casal, through whom, in turn, the defendant in error deraigns title, and not evidence of the recordation of the original grant from the State to its original purchaser.

Answering that contention, it should be noted—

1st. That the deed from the State's purchaser to Casal, in each instance, directly refers to the deed or grant from the Government, and recites:

> "In consequence he grants and conveys to Sr.
> "Casal the ownership, rights and actions which he
> "has or may have in the said land, authorizing him
> "to take possession thereof and to dispose of it at his
> "will, as of a thing lawfully acquired, to which end
> "he now delivers him the title deeds, undertaking to

"do the same with respect to the transcript of this "present instrument, as soon as the same is copied, "thus effecting the symbolic delivery of the said "land, which he declares to be free from all incum- "brances, binding himself to warrant and defend the "same at all times" (R., 27, 29, 32, 34, 37, 39, 41).

2d. Under the mortgage law of the Philippines established in 1893 by Spain it was provided in article 20 as follows:

"To record or enter instruments transferring or "encumbering the ownership or possession of real "property or property rights, the interest of the per- "son conveying it, or in whose name the transfer or "encumbrance is made, must be previously re- "corded.

"Registers shall refuse to record said instruments "as long as this requisite has not been complied with, "being directly responsible for the damage they may "cause third parties by the violation of this pro- "vision.

"However, they may record without this requisite "all deeds executed by persons who have acquired "an interest in the same property before the day on "which the mortgage law was put into operation, "provided they justify their title with trustworthy "documents, and the same interest is not recorded "in favor of another person; but in the record re- "quested the essential circumstances of said title will "be indicated, which shall be taken from the docu- "ments necessary for this purpose."

Now, these instruments of conveyance from the original grantees of the State to Casal were so recorded in 1898, and following the clear provisions of article 20 of the mortgage law just quoted, it is plain the register could not thus have recorded the conveyances from such original State grantee to Casal without having had produced to him the original title or grant from the Spanish Government to Casal's grantor.

It will be noted that the original grant from the Spanish Government to its grantee and the date of conveyance from the latter to Casal appear in this record (Exhibits 1-7) with each title deed from the Government attached to and forming part of the deed from such State grantee to Casal. Hence, having in view this provision of the mortgage law just quoted, it is perfectly plain that the register's note upon each of these exhibits is made in complete accord with these requirements of the mortgage law. He certified, in legal effect, that the parcel of land covered by such conveyance from each grantor to Casal forms part of the Hacienda de San Luis y la Concepcion, as recorded in the two certain volumes of records therein specifically described by number and page.

So far, then, as recordation is concerned, this title was so recorded years before the present action was brought—this complaint having been filed in 1902.

Otherwise stated, we may justly presume that the register, in performance of his plain duty, refused to record a deed from the State's grantee to Casal until the original title deed from the State to such grantor was produced before him. And taking the exhibits together as we find them in this record, the reasonable and proper presumption is that such original deed or grant from the Spanish Government to its purchaser, and the conveyance from such purchaser to Casal, were necessarily produced *together* before the Register of Titles, and by him accepted and recorded as a complete chain of title, showing the deed or grant from the Government to its purchaser, and the deed, in turn, from such purchaser to Casal. This conclusion accords with the requirement of the mortgage law quoted *supra*, as well as with the settled rule of universal application which accords to the recording officer the performance of plain duty. That just conclusion we submit answers all the technical argument and objection urged against the defendant in error's title under this head.

B.

It is further contended that the grants from the Spanish Government to the original purchasers are invalid, because it is assumed that the requirement that the instrument should be entered in the Department of Isabela was a condition precedent which, if not performed, would render the grants null and void. Whilst we have discussed this point with some fullness yet, in direct response to the brief for plaintiffs in error, we add:

All of the cases arising in Florida after the Spanish cession thereof, and ruled in this court, which are cited upon the opposing brief, relate to mere concessions or promises of grant, to be made complete on the performance by the petitioner of prescribed specific acts or conditions. A number of these cases are shortly styled "Mill cases," wherein the petitioner asked for the privilege of erecting a saw mill and the right to cut timber from a specified area, the concession being made and in terms reciting that it should not take effect, or, to use the language of one case, "until he builds said mill this grant will be considered null and void." In this series of cases, where this court found the condition had not been fulfilled, or even attempted, it was held that the Treaty of Cession did not impose upon our Government any greater obligation than that assumed by the Spanish Government, and that hence entire failure to perform the condition at all, prior to the change of sovereignty, defeated the grant under Spain, and with like necessary effect under this Government. But in these cases so freely cited upon the adversary brief, the court is careful to draw the distinction between concessions of this nature and actual grants in fee, as illustrated by the Aredondo case, 6 Pet., 691, and others cited *supra,* wherein requirements respecting the land were held not to defeat the transfer of title, which had been made in terms by the instruments of grant from the former sovereign.

We do not burden this brief with extended citations from these cases, because, in our view, the case of *McMicken vs. United States* (97 U. S., 204) presents in clear expression the distinction, which is obvious, between a grant founded upon a consideration already paid (as here), and a mere concession or promise of a grant, dependent upon future acts of the petitioner or grantee. In the McMicken case the only title paper presented was a warrant or order of survey. Commenting thereon this court said (p. 206):

> "This is the only title presented, and neither sur-
> "vey nor settlement nor improvement of any kind
> "appears ever to have been made on the part of the
> "petitioner, or any one claiming under him."

It did appear that after the cession to the United States, the claimant attempted to obtain such survey. The court considers the various acts of Congress relating to the settlement of private land claims under the Florida cession, and the confirmation thereby of *imperfect* claims, and as the order for survey in the McMicken case was the only basis of claim, and finding such survey had not been made, the court ruled against the claim, saying:

> "But the examination of the surveyor, the actual
> "survey, and the return of the plat were conditions
> "precedent, and he had no equity against the Gov-
> "ernment, and no just claim to a grant until they
> "were performed; *for he had paid nothing, and done*
> "*nothing, which gave him a claim upon the con-*
> "*science and good faith of the Government.*"

The opinion then proceeds to draw the sharp distinction between a grant of title, citing *Chouteau's Heirs vs. United States*, 9 Pet., 147; *United States vs. Arredondo et al.*, 6 Pet., 691; *United States vs. Sibbald*, 10 Pet., 313; *Hornsby vs. United States*, 10 Wall., 224 (quoted fully *supra*), and adds:

> "There is nothing in any of these cases inconsist-
> "ent with the assertion of the forfeiture in the case
> "before us. Here no title was granted: nothing but

"a permit to inhabit and cultivate as preliminary to "a grant. It might have ripened into an equitable "title had the conditions been fulfilled, or even if a "fair effort had been made to fulfill them, or if any "plausible excuse could be offered for their non-ful-"filment. But no attempt even appears ever to have "been made to fulfill them; and the Government "proceeded to make other disposition of the land. "There is no need of any more formal assertion by "the Government of its right to resume the proprie-"torship," citing cases.

We do not here extend the discussion, because in the foregoing part of this brief we have endeavored to show the sharp distinction always maintained in the cases ruled by this court between grants of land which, in terms, conveyed the fee, and those concessions or warrants of survey, or other inchoate evidences of title which could not ripen into complete grants of the fee until the conditions therein expressed had been performed. It would hence extend this brief to an undue length to here repeat or attempt more extended review of the cases.

The extended argument upon the opposing brief seeks to show that the language of the grant from the State, in directing entry thereof in the District of Isabela "under pain of nullity," means that if not done the grant *ipso facto* becomes null. But we submit that it is precisely as ruled by the Supreme Court below, a matter within the control of the Government in proceeding to nullify the grant and to return the purchase money paid therefor. And this ruling, concurred in by the native judges of that court as declaring the civil law of Spain applicable in the Philippines, is in precise accord with the doctrine of the civil law from the same sources, in respect of Spanish and Mexican grants in California.

This is illustrated by the language of Chief Justice Taney in the Fremont case and of Mr. Justice Field in the Hornsby case, which we have fully quoted *supra*, and which is to the effect that the grant continues unaffected unless the

land be denounced by another and upon judicial inquiry a forfeiture of the previous grant is thereon declared. For it must be distinctly recognized that in present case these lands were purchased as part of the public domain from the Spanish Government and the Government price paid therefor. The trial court has found that the original grantee and the present defendant in error, who deraigns title from him, were in actual possession thereunder; each court as distinctly also found that the lands here in suit are embraced within the description of these grants from the Spanish Government, and form part of the defendant company's plantation. None of the defendants assert any adversary record title. It is but the plain truth to add that several of them, when put upon the stand, admitted in terms that they did not claim title under the Government. They were simply squatters, whose occupancy could in nowise hamper the right of the former Government to sell its public domain, and whose trespass thereon as against the possession and title of the rightful owner could not be pleaded either under Spanish or American law as defeating the legal title so acquired from the sovereign.

Indeed, it is plain that if the title of the defendant in error were now rejected it would result in declaring these lands to be part of the public domain to which the United States had succeeded under the treaty or cession, and would not validate the possessions of these plaintiffs in error. But it would, we submit with all respect, be a present denial of a title made by the Spanish Government, based upon a money consideration and followed by actual possession under such form of grants at the time of the cession of the islands from Spain to the United States.

Unlike the treaties by which Louisiana, Florida, and California were acquired, the United States has not, in respect of the Philippines, undertaken to investigate the sources of original Spanish title, or by boards, courts, or otherwise (as in the other instances mentioned) sought to compel the

owners of lands to submit their titles for adjudication and confirmation under this Government. On the contrary, by article VIII of the Treaty of Paris, between Spain and the United States, the just rights of property of individuals and corporations, both civil and ecclesiastic, are expressly recognized. That article is as follows:

"ARTICLE VIII.

"In conformity with the provisions of articles I, II and III, of this treaty, Spain relinquishes in Cuba, and cedes in Porto Rico and other islands in the West Indies, in the island of Guam, and in the Philippine Archipelago, all the buildings, wharves, barracks, forts, structures, public highways, and other immovable property which, in conformity with law, belong to the public domain, and as such belong to the Crown of Spain.

"And it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, cannot in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of private individuals, of whatsoever nationality such individuals may be.

"The aforesaid relinquishment or cession, as the case may be, includes all documents exclusively referring to the sovereignty relinquished or ceded that may exist in the archives of the Peninsula. Where any document in such archives only in part relates to said sovereignty, a copy of such part will be furnished whenever it shall be requested. Like rules shall be reciprocally observed in favor of Spain in respect of documents in the archives of the islands above referred to."

We have, then, in the case at bar, a sale of land in 1882 by the Spanish Government for a money consideration,

the genuineness of the transaction and the title passed from Spain thereunder unchallenged; the possession of the original grantee and its successor in interest judicially found. Upon this record the Supreme Court of the Philippines decided that the defendant in error is in fact and law the owner of the title in fee, and as such, of course, entitled to the corresponding possession, use and enjoyment of the property. The plaintiffs in error meet all of this only with the assertion that, in their view, a condition in respect of recordation was a condition precedent and, in their view, the recordation of the titles in the proper registry of Isabela in 1898 was not sufficient to meet such condition. And on this argument alone this court is asked to repudiate the title made by the Spanish Government and, in legal effect, declare these lands to be still a part of the public domain to which the United States has succeeded, notwithstanding the admitted fact that the former Government sold these lands and received the full purchase money therefor.

It is argued that because in 1895 the register of titles refused recordation to these instruments they could not thereafter be lawfully registered. That is a plain error—*one of fact.* None of the conveyances (Exhibits 1-7) from the Spanish Government and the deed, in turn, from such grantee to Casal were denied such registration. They appear to have been offered for recordation on September 17, 1898, and to have been then duly registered. The recordation which was refused was of title shown in Exhibit No. 8 (R., 43, 52). At the bottom of page 51 appears this statement:

> "The inscription of the preceding document is
> "not admitted by reason of the fact that it is de-
> "fective with respect to the personality of the cor-
> "poration mentioned therein, and this being a defect
> "which does not appear to be subject to correction,
> "no preventive annotation can be made thereof.—
> "Ilagan, the ninth day of March, one thousand eight
> "hundred and ninety-five.—Juan Conde.—A seal
> "reading 'Registry of Property'—Isabela."

Now, in Exhibit No. 9, which is a later conveyance of the same general property included in the plantations of the defendant in error, there appears at pages 54-55 the recital of the corporate acts and capacity of the defendant in error. This instrument, therefore, cured whatever defect, if any, on which the recordation of the former instrument (Exhibit 8) was refused. And at the end of Exhibit 9 appears the formal certificate of inscription or registration on September 18, 1898, in the proper registry. Hence, as matter of law, the opposing argument, which seeks to deny the right of recordation after the defect, if any, has thus been cured by a new and formal instrument, must wholly disappear, and we need not follow counsel with further discussion under this head. It was simply the case of an alleged defective instrument or deed, which being cured (if cure was needed) by a new and complete instrument, the latter instrument was properly entitled to registry and recordation was duly accorded it. The assumed defects in the original instrument (Exhibit 8), having been thus cured, that instrument was likewise entitled to recordation and was so recorded on the same date. Certainly, no objection can be made thereto by these plaintiffs in error or any one else, and as certainly no other or sound objection has been or can be made to the recordation of both of these documents.

As will appear from the certificates of recordation attached to Exhibits 8 and 9, and which cover the entire holdings of the defendant in error, they were duly recorded and the volume and pages of such record given in detail.

Turning now, to Exhibits 1 to 7, inclusive, it is plain that the certificate of the same register on each of such original grants and conveyances from the original grantor to Casal, was properly made in noting thereon that same form part of the Hacienda de San Luis y la Concepcion, recorded in the same volumes and pages as are given in the certificate of registration of Exhibits 8 and 9, which cover all of the description and titles of the defendant in error. This form

of certificate in respect of recordation as to these titles (Exhibits 1-7) is in precise accord with the provisions of article 273 of the Regulations under the Mortgage law which provides:

> "ART. 273. If the entry or record of several estates "or rights has been made, all of which are contained "in one instrument, the memorandum made at the "foot thereof shall state precisely and laconically "what has been done, noting also at the margin of "the description of the instrument of each estate or "right, its number, folio, book, and number of the "record or letter of the entry which has been made "regarding the same, without collecting any fees for "these statements."

Therefrom it will be seen that the Register was directed to take notice of these several instruments which record title as to part in the manner in which he did so note thereon. It was hence clearly done in accordance with the law and regulations. The documents presented show clear and direct title from the Spanish Government, and with the instruments (Exhibits 8 and 9) show clear chain of title from the sovereign, in precise accord with the requirements of article 20 of the Mortgage Law of 1893, which we have fully quoted above.

C.

The objection that the defendant in error as plaintiff, failed to prove title to the entire Hacienda de San Luis y la Concepcion, involves only a question of fact. It was so affirmatively found as such both by the trial court and the Supreme Court of the Philippines (R., 122 and 172). It is hence conclusive here. The suggestion that the boundaries thus described in the complaint do not correspond with the title deeds to the company (Exhibits 8 and 9) is, however, incorrect. Those exhibits are very lengthy, but careful reading thereof will disclose that there is no discrepancy in description between the complaint and title deed Exhibit 8.

The title deed Exhibit 9 in terms explains the apparent discrepancy in the statement of aggregate quantity, as given in Exhibit 8, and the enlarged area, stated in Exhibit 9, the difference being only that the latter deed conveyed all of the grantor's interest including the additional area acquired by him and in turn conveyed to the defendant in error—an explanation fully made in accordance with Spanish custom and set out in Exhibit 9 (R., 60, 61). The Supreme Court below holds all these instruments properly recorded and demonstrating full title in the defendant in error here (R., 175).

D.

The assertion of error in the trial court admitting in evidence all documents subject to subsequent determination of their legal value is without force. The court sat without a jury and was hence judge of both law and fact.

The assertion that the trial judge warned defendant's counsel "from stopping witness in his testimony," and hence committed error, is met by that court's statement in overruling motion for new trial with direct denial (R., 167), the court saying:

> "No one has been prohibited from questioning or
> "cross-questioning any witness."

The objection to Exhibit No. 13 (R., 64) being a contract between the plaintiff company and a number of native farmers because not plead in the original complaint is equally without force. It was introduced to show "that the com-
"pany had exercised acts of ownership on the Hacienda of
"San Luis y la Concepcion, and also to prove that the other
"defendants, whose names do not appear in the said docu-
"ment, were not at the date it was executed in occupation
"of the lands within the boundaries of the hacienda—that
"is to say, that their trespass is of recent date."

(Objections to Bill of Exceptions, R., 138, 139.)

For such purpose it was clearly admissible as part of the *res gestæ*, and as supporting the claim of title made by the

plaintiff company. Nor is it material to show that the lands to which the contract refers "are the same as those in litigation." The *point* to which this proof was addressed was to show that the signers of this contract who attorned to the company, were upon the company's lands held under the same title as those here in dispute, and taken with the oral evidence showed that the signers thereto were *all* the persons in possession of separate parcels of the larger estate owned by the company at the date of its execution—February 29, 1896 (R., 64).

The assertion of error in the trial court's denial of the motion of plaintiffs in error for an order directing the records of the Registry of Title to be brought into court for inspection and examination is without force. Nor is the statement of opposing brief that "defendants denied the genuineness of Exhibits 8 and 9 and insisted that they were fraudulent and forged" (R., 83 and 119) supported by any such recitals in the record. Inspection of pages 83 and 119 does not disclose any ground assigned for the motion. It was hence plainly within the discretion of the trial judge to deny the motion even though he might have erred in applying Article 225 of the Mortgage Law forbidding the removal of such books from the Registry, a point we by no means concede. The statement of the opposing brief, page 42, as to the irregularities apparent on the original Registry find no support in the record, and certainly were not suggested to the trial court as the basis for such motion. As the trial court was the sole judge of the law and the facts in the case, it was perfectly competent for him to make his own examination, and his admission of the proof of title, as presented by the original plaintiff, is conclusive that the trial judge was satisfied that the registration thereof was in all respects genuine, and, to use the language of the court—

> "this, apart from the fact that counsel for the de-
> "fendants not having formally denied the authen-
> "ticity of the signatures, nor having expressed and
> "declared that they are falsified, must be held to have

"admitted their authenticity, inasmuch as on the "other hand they are authorized by the official seal "of the Registry" (R., 124).

The final contention of the opposing brief that it is impossible to stretch the area comprised within the seven grants from Spain (some 800 hectares) into 3,900 hectares claimed in the complaint, is readily answered. The action was brought to recover possession of that part only of the plantation covered by the title shown from Spain in Exhibits 1 to 7, inclusive. Exhibits 8 and 9, and the accompanying map, Exhibit 10, to which Exhibit 8 clearly refers (R., 48), did disclose the entire out-boundaries of the plaintiff's estate. Both the trial court and the Supreme Court below find the land here in suit within the boundaries of the plaintiff's estate. It was hence only necessary to prove title in fee to the actual area involved in this suit to justify judgment for possession.

We may pertinently add that neither the parties litigant, their counsel, nor the trial court, found any difficulty in identifying the several parcels thus held in several possession by these defendants, nor was the sufficiency of the description of the premises challenged in the separate answer of any defendant, and the objection now urged in the court of final review on this point can have no existence in law, because standing wholly in conflict with the controlling facts in that regard, as found by the courts below. It is plainly an after thought.

It is manifest that the case for plaintiff in error stands wholly upon extreme technicalities. The purchase from Spain for money consideration, the formal deed of title thereto from the Sovereign, and the deraignment of such title to defendant in error stand as incontrovertible facts and are so judicially found. But the point is insisted upon that it does not affirmatively appear how possession was taken under the original grants from Spain. It is hence insisted that our title must fail because the manner of possession (our pos-

session being found as a fact)) is not disclosed. We submit, a grant in fee from the former Sovereign, and based upon a consideration admitted as received upon its face, cannot be judicially destroyed upon such ground.

Nor is the contention that the grant from Spain is null and void because of assumed defects in the original recordation thereof sound in any proper view.

In the first place, such deeds all disclose the previous application to purchase, the ascertainment of values, and the payment of the Government price. These recitals in the instrument conclude with the declaration that because thereof—

> "*I issue this title, so that by virtue thereof the said*
> "*Doroteo Faustino may be declared the lawful owner*
> "*of the said land.*"

Then follows the requirement that

> "This title shall be entered in the Central Admin-
> "istration of Government Monopolies and subse-
> "quently presented to the politico-military govern-
> "ment of Isabela de Luzon under pain of nullity if
> "the contrary is done, so that it may be entered in
> "that government and possession may be given in
> "the usual legal form."

Opposing counsel read the words "under pain of nullity" as absolute in declaring *ipso facto* failure of title. But such is *not* the just meaning to be applied thereto. The land had been purchased and paid for; the deed had been passed; the interest of the grantee had plainly vested. The words should therefore be read in the sense that if the subsequent proceedings required were not had, the Government reserved the right to thereafter nullify the grant upon the denouncement of the land by another. This principle of the civil law is plainly set forth in the Fremont and Hornsby cases in this court, fully cited in foregoing pages of this brief.

It accords also with the legal definition of the word "nullity" in the civil law, as set forth in Escriche's Law Diction-

nulidad

ary (Diccionario Razonado de Legislacion y Jurisprudencia, Paris, 1852), in its article on the word "nullity" ~~(nullidad)~~, which after setting forth with great nicety the difference between "nullity" and "rescission," concludes thus—

> "But in spite of these differences between the two, "the words 'nullity' and 'rescission' are sometimes "used interchangeably."

It must be remembered that these titles stood without challenge from the Spanish Government for more than seventeen years before the cession of the Philippines to the United States. Actual possession thereunder is found as a fact in the present case; the title is traced from the Spanish Government, *as a matter of record*, to this defendant in error. These facts are judicially found by both courts below. The learned Chief Justice of the Supreme Court of the Philippines (a Filipino lawyer of distinguished ability), and whose opinion is concurred in by his Filipino associates has held (R., 173):

> "The defendants did not present any title deeds, "nor did they prove an adverse possession on their "own behalf sufficient to overcome the recorded title "deeds which the plaintiff presented in support of "the complaint.
>
> "After the inscription of title deeds in the Register "of Property, the only owner of the recorded prop- "erty is the one who appears as such on the books of "the Register until the record is canceled by a final "judgment. There is no reason for ordering the "cancellation of the inscription unless this relief is "prayed for and proof is made of a better right on "the part of some other person who claims to be law- "ful owner or possessor. In this case there has been "no demand for the cancellation of the inscription "in the Registry of the Hacienda of San Luis y La "Concepcion in favor of the Compania General de "Tabacos. It has been alleged that the inscription "is defective, but no person entitled to maintain an "action for the purpose has instituted proceedings

"for the cancellation of that inscription. As long "as the inscription subsists it must produce all its "effects.

"To allege the nullity of the original deeds ex- "ecuted by the Spanish Government in favor of the "original grantees of the lands in question is to "allege the nullity of the contract entered into be- "tween the Spanish Government as grantor and them "as vendees, for the titles are simply evidenciary of "the sale for a certain consideration of a specific "thing. Under the provisions of article 1302 of the "Civil Code, the action for the annulment of con- "tracts can only be maintained by those who are "bound, either principally or subsidiarily, by virtue "thereof. The defendants not being persons bound "either principally or subsidiarily by virtue of that "contract of sale between the Spanish Government "and those original grantees they cannot maintain "the action of nullity of which they seek to avail "themselves as a defense in this suit. And it is logi- "cal that it should be so. The nullity of an obliga- "tion being declared, the contracting parties must "reciprocally restore the things which have been the "object of the contract (Art. 1103). If the nullity "of the title deeds referred to should be declared in "conformity with the contention of the defendants, "the lands should be restored to the Spanish Govern- "ment and the price paid for them should be restored "by that Government to the original grantees or "their *or their* successors. It would follow that the "lands in question could not remain in the possession "of the defendants, because they would have to be "restored to the vendor, nor could the latter be com- "pelled to restore the price, not having had an op- "portunity to be heard in this suit."

The principle thus applied by the court below is in full accord with the American law, for many decisions of the court affirm the rule that the grant or patent from the United States can only be annulled at the direct suit of the Government.

We submit that such clear exposition of the Spanish law of the Philippines covers all of the case here open to judicial review, and with resulting affirmance of the judgment of that court.

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